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CARGO PREFERENCE—PART II

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JGS

Cargo Preference-Part II, Serial No... E

SUBCOMMITTEE ON MERCHANT MARINE
OF THE
COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

CARGO PREFERENCE ISSUES AND ENFORCEMENT OF
RELATED LAWS AND REGULATIONS, TO IDENTIFY AND
ADDRESS PROBLEMS RELATING TO THEIR ADMINIS-
TRATION

JUNE 8, 23, 1993

Serial No. 103-33

Printed for the use of the Committee on Merchant Marine and Fisheries



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CARGO PREFERENCE

TUESDAY, JUNE 8, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:10 p.m., in room 1334, Longworth House Office Building, Hon. William O. Lipinski (Chairman of the Subcommittee) presiding.

Present: Representatives Lipinski, Pickett, Taylor, Andrews, Green, Hastings, Furse, Stupak, Bateman, King, Bentley, and Fields (ex officio).

Staff Present: Keith Lesnick, Subcommittee Staff Director; Sharon K. Brooks, Counsel; David Honness, Professional Staff; Randy Morris, Subcommittee Clerk; Fred Zeytoonjian, Staff Aide; Hugh N. Johnston, Minority Counsel; Jim Caponiti, MARAD Detainee; Jeffrey R. Pike, Committee Staff Director; John Cullather, Professional Staff; Carl W. Bentzel, Counsel; Mary Kitsos, Chief Clerk; Sue Waldron, Press Assistant; Ann M. Mueller, Clerk; Tom Kitsos; Harry F. Burroughs, Minority Staff Director; Cynthia M. Wilkinson, Minority Chief Counsel; Kip Robinson, Minority Counsel; and Margherita Woods, Clerk.

Mr. LIPINSKI. Good afternoon, everyone. Thank you all for being here, particularly the Members that are here.

STATEMENT OF HON. WILLIAM O. LIPINSKI, A U.S. REPRESENTATIVE FROM ILLINOIS, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

Mr. LIPINSKI. As many of you may know, there has been some work being done toward making sure that the Department of State comes over here and testifies before our subcommittee in regards to the cargo preference issue, and there has been serious talk of subpoenaing them to do so because of the fact that they have failed to respond on three recent occasions to an invitation to come over here and testify.

Shortly before we started this hearing we were notified by the Department of State that they would be more than happy to come and testify without any subpoenaing involved whatsoever at a convenient time for the members of this subcommittee, so the fear of a subpoena has ended. We are expecting and we have been promised full cooperation by the Department of State, and very shortly, probably either Thursday of this week or Tuesday of next week we will be announcing a hearing when the Department of State will be here to testify not only on the cargo preference, but on a number of

other issues that we are all mutually interested in. That over and done with, we can get on to a more regular portion of our hearing today.

Today the subcommittee continues its oversight into cargo preference issues and enforcement of related laws and regulations. We will hear testimony from witnesses representing the Department of Transportation, the Department of Agriculture, and the Department of Defense. We will also have the participation of witnesses representing the U.S. bulk vessel industry and U.S. grain exporters. These deliberations continue our ongoing effort to identify and address problems related to the administration of cargo preference programs by the U.S. Government agencies.

The various cargo preference laws that now exist are an important element of support to our maritime industry, providing a dependable pool of cargoes for the employment of U.S. vessels crewed by U.S. citizens. Programs funded by U.S. taxpayers should have widespread economic benefit to workers in this country, and it is logical for U.S. maritime interests to benefit from the transportation of government-generated cargoes. However, it is apparent that cargo preference laws have been circumvented in the past by our government agencies.

Today's hearing will address these and other concerns of the subcommittee.

A major topic for discussion today will be the shipment of grain to Russia under Department of Agriculture programs. We expect to hear testimony on the operational barriers that have frustrated the successful participation of U.S.-flag vessels in this trade and any progress toward eliminating those problems that have been achieved by a working group from the Departments of Agriculture and Transportation.

The subcommittee also intends to examine the applicability of cargo preference when Department of Defense funds are used for the transportation of humanitarian assistance.

Finally, the subcommittee had requested that the Department of State appear to testify on its compromise agreement with the government of Kuwait to allow U.S.-flag vessels to participate in the transportation of goods necessary for that country's reconstruction efforts. We were interested in learning of the degree to which that department is committed to cargo preference when it negotiates loan guarantee agreements or other agreements that provide assistance. As I mentioned, unfortunately the Department of State has not been able to—had not been able to get around to coming over here and testifying, but since this statement that I am reading from was written we have had a new development, as I made mention of earlier, and that problem has been worked out, and the Department of State will be with us in the very near future.

That is my opening statement. I now recognize Mr. Bateman for his opening statement.

**STATEMENT OF HON. HERBERT H. BATEMAN, A U.S.
REPRESENTATIVE FROM VIRGINIA**

Mr. BATEMAN. Thank you very much, Mr. Chairman. I must again compliment you on continuing this series of hearings on our

cargo preference laws and their implementation by the responsible government agencies. Judging by the problems raised in the carriers' testimony we have in our files today, we should schedule a hearing once a week. That may have to be the result if solutions are not forthcoming.

Quite frankly, what I am seeing so far seems another case of contradictory testimony. For instance, one group suggests there are port delays in the Soviet Union, yet the agency responsible says otherwise. One agency suggests that its agency is fully complying with the cargo preference laws, yet another agency suggests they are not. Has the Kuwaiti equal access agreement been implemented? Secretary Christopher says we have a breakthrough. My real question is not whether we have a breakthrough or a deal but whether we have cargo moving on U.S.-flag vessels. I hope someone will authoritatively answer those questions.

Finally, let me quote from MARAD's prepared testimony, page two, testimony which I presume was cleared by the White House. "President Clinton has signaled that his administration intends to abide by long-standing maritime policy in the movement of the aid financed by the American taxpayer to the Russian people. This administration is also committed to resolving the long-term policy disputes among Federal agencies over the use of U.S.-flag vessels." If the President of the United States has told these agencies to settle their disputes, then why is it not happening? Hopefully, we will get answers to some of these questions today. Thank you, Mr. Chairman, and that concludes my opening statement, but I would ask unanimous consent that there appear in the record the statement of our colleague Peter King.

Mr. LIPINSKI. Without objection, so ordered.
[The statement of Mr. King follows:]

STATEMENT OF HON. PETER T. KING, A U.S. REPRESENTATIVE FROM NEW YORK

Thank you, Mr. Chairman. I would like to join you in welcoming our witnesses this afternoon, especially Mr. Philip Shapiro, President and CEO of Liberty Maritime Corporation. Mr. Shapiro, who will be testifying on the second panel, is a resident of New York's 3rd District, the area I am privileged to represent.

I share the concern of U.S.-flag vessels who are engaged in shipping grain to the former Soviet Union. U.S.-flag vessel rates are generally higher than foreign-flag rates because of higher U.S. safety, environmental, and labor standards. But there is more to this disparity in rates than meets the eye.

Many U.S. maritime interests have stated that the difference in rates is exacerbated by U.S. Government practices such as inefficient procurement policies, uneven cargo timing, commercially unreasonable contract terms, and discrimination against U.S. carriers. These problems in addition to the chaotic port and transportation conditions of the former Soviet Union significantly increases the costs of U.S.-flag vessels trying to move grain into Russia.

I look forward to pursuing this and several other issues with our distinguished witnesses.

Thank you, Mr. Chairman.

Mr. LIPINSKI. The Chair now recognizes Mr. Pickett.

Mr. PICKETT. I don't have an opening statement, Mr. Chairman.

Mr. LIPINSKI. The Chair now recognizes Mr. Fields.

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS

Mr. FIELDS. Mr. Chairman, if I could, I will place my statement in the record. I am here today as the Ranking Member to lend support to what you are attempting to do in this hearing. It continues to amaze me why the government does not get behind our cargo preference laws to make sure they are enforced in their entirety. It galls me that the State Department is not at this hearing today. I hope you receive some response as to why they are not here. With that, Mr. Chairman, I will place the remainder of my statement in the record.

[The statement of Mr. Fields follows:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, I am pleased that the Merchant Marine Subcommittee is continuing its oversight of the enforcement of our Federal cargo preference laws and I compliment you for holding this important hearing.

It never ceases to amaze me how some Government officials, Members of Congress, and others, persist in attacking the U.S. merchant marine because American ships are used to carry a portion of the foreign aid we give to other nations of the world. The hypocrisy of some of these individuals—particularly those who either provide agricultural subsidies or benefit from them—is particularly galling to this Member of Congress.

It seems to me that the cornerstone of our Government aid effort should be to provide Americans with the opportunity to benefit from these aid programs. If the United States Government provides relief for less fortunate people around the world, then American businesses should be entitled to participate in these tax-supported projects.

It is popular these days to talk about providing jobs for Americans. With our current cargo preference requirements, the Government is doing just that—providing jobs for American citizens employed in the maritime industry. If the opponents of cargo preference were to have their way, our foreign aid programs would be providing jobs, but not for Americans. Apparently, these people believe that it is appropriate to use taxpayer revenues to provide jobs for American farm workers through agricultural subsidies, but not for American merchant seamen through our cargo preference laws.

Mr. Chairman, I hope that today's hearing will shed some light on the recent difficulties that American shipowners have faced in the Russian aid effort. I hope that the witnesses this afternoon will specifically address the administrative procedures that have contributed to the difficulties of loading and unloading the Russian cargoes. These problems have directly led to higher U.S. operating costs. I will also be interested in the statements from the officials of the Department of Defense on their interpretation and implementation of the laws providing authority for humanitarian assistance.

Hopefully, these hearings will allow the Committee to develop a record that forcefully responds to the opponents of cargo preference. Our Government needs to reassess the procedures under which these kinds of shipments are handled. We need to make it easier, not harder, for American operators to compete with foreign operators, which are not subject to the same kinds of rules and regulations that the U.S. merchant marine now faces. In addition, I trust that the attempts to circumvent the cargo preference laws by using "notwithstanding" clauses will not be repeated in the future laws. Finally, it is my firm belief that if our current cargo preference laws were properly enforced then many of the problems with the program would simply disappear.

Thank you again, Mr. Chairman. I look forward to hearing from our distinguished witnesses.

Mr. LIPINSKI. We did cover the State Department probably before you came in.

Mr. Taylor.

Mr. TAYLOR. No statement.

Mr. LIPINSKI. I would like to either welcome to this committee or welcome back to this committee or however she feels most comfortable, one of our outstanding members, Helen Bentley.

**STATEMENT OF HON. HELEN DELICH BENTLEY, A U.S.
REPRESENTATIVE FROM MARYLAND**

Mrs. BENTLEY. Thank you, Mr. Chairman. It is always—it is great to be back, I can tell you that. I, too, am disappointed that the State Department is not coming, but understand they have said they will come at a later date. The State Department has been a major obstacle in the entire cargo preference picture, and I think it is very, very important that we bring them in here in order to find out exactly what their thinking is and what is their present course re cargo preference. Thank you.

Mr. LIPINSKI. Thank you.

Mr. Stupak.

Mr. STUPAK. Nothing.

Mr. LIPINSKI. Thank you. Just so everybody understands, the Department of State, for any late arrivals has agreed to come without a subpoena. We will schedule a hearing with them, as I say, either on Thursday of this week or next week Tuesday, and so shortly they will be here and hopefully be able to answer a lot of the questions we have.

Now getting into our first panel today, which is the government panel, we have from the U.S. Department of Defense the Honorable Wallace T. Sansone, Vice Commander Military Sealift Command. We have from the U.S. Department of Agriculture the Honorable Christopher Goldthwait, General Sales Manager and Associate Administrator, Foreign Agriculture Service, and from the U.S. Department of Transportation, the Honorable Joan B. Yim, Acting Administrator U.S. Maritime Administration. I understand that Joan, you are going to be the spokesman for the group or at least the first one to speak.

Ms. YIM. However you want to do it, Mr. Chairman.

Mr. LIPINSKI. That is what my staff told me, that you were going to be first and since you are the one lady amongst that panel over there, we will go ladies first and I think that is keeping with the diversity of the Clinton administration also.

**STATEMENTS OF WALLACE T. SANSONE, VICE COMMANDER,
MILITARY SEALIFT COMMAND; CHRISTOPHER GOLDTHWAIT,
GENERAL SALES MANAGER AND ASSOCIATE ADMINISTRATOR,
FOREIGN AGRICULTURE SERVICE; AND JOAN B. YIM, ACTING
ADMINISTRATOR, U.S. MARITIME ADMINISTRATION**

STATEMENT OF JOAN B. YIM

Ms. YIM. Thank you, Mr. Chairman. Mr. Chairman, members of the subcommittee, my name is Joan Yim, and I am the Acting Maritime Administrator for the Department of Transportation. I am pleased to be here today to comment on cargo preference issues pertaining to Russian aid and the \$10 billion loan guarantee program to Israel. I appreciate the opportunity to address these programs which support our national security and domestic and international economic policies.

By way of background, it may be useful to note that U.S. cargo preference programs have been statutorily prescribed for military cargo since 1904 and for nonmilitary cargo on a permanent basis since 1954. These laws require that government-owned cargoes or foreign assistance cargoes which are either donated or government-financed at concessional terms be shipped wholly or partly on U.S.-flag vessels.

The underlying concept for these requirements is twofold. First, taxpayer money that underwrites donated aid should return a portion of its value to the U.S. economy through shipment on U.S. vessels. Secondly, supporting the vitality of the U.S. Merchant Marine helps to assure the availability of U.S.-flag vessels and crews during times of national emergency and the development of our commerce in peacetime.

President Clinton has signaled, as you heard already, that his administration intends to abide by long-standing maritime policy in the movement of aid financed by the American taxpayer to the Russian people. This administration is also committed to resolving the long-term policy disputes among Federal agencies over the use of U.S.-flag vessels. I think you are going to hear more about that from other witnesses. I will now touch upon the cargo preference programs as they relate to areas of congressional concern, namely the aid to Russia and the Israeli loan program.

President Clinton's new aid program to the Commonwealth of Independent States consists of low cost concessional agricultural credits under the Food for Progress Program. Since it is a U.S. food assistance program, it is subject to preference. U.S. carriers are thus entitled to move at least 75 percent of this traffic, and the American taxpayer should be assured that unnecessary charges will not be imposed either by the recipient nation or the vessel operator simply because the U.S. Treasury is footing the bill.

A number of problems in the Russian trade have put upward pressure on U.S.-flag rates. MARAD has had a system in place for years to prevent excessive rates called the fair and reasonable guideline rate. Each potential contract award, and I would like to emphasize potential contract award, is scrutinized relative to vessel costs which are filed annually with MARAD. No bid is accepted if it exceeds the guideline rate calculated on that vessel's cost plus a modest profit.

USDA became concerned that high rates would cause them to run out of freight money in this particular commitment of a \$700 million assistance program to Russia. MARAD approached USDA to establish a working group to deal with the problems. Our goal was to assure that the President's commitment of \$700 million in agricultural aid reaches Russia in a timely fashion, and at the same time U.S. carriers receive their fair share of cargoes at the most economical cost possible. Further, it was our intent to dispel some of the controversy regarding allegedly inflated U.S.-flag freight rates that were being bandied about which, if offered, were rejected as not meeting the fair and reasonable guideline rate. To allow such an interagency controversy to continue does not serve the administration or the American people.

The group met numerous times over several weeks and identified issues in a number of important areas. In doing so, an overriding

concern was to distinguish fact from opinion so as to concentrate on actions which could address the problems. The issues included discharge terms, free out terms, which provide that expenses associated with cargo discharge are for the charterer's rather than the vessel owner's account and function as an incentive to the receiver to discharge quickly. A fast discharge earns the receiver additional money. A slow discharge incurs additional costs to the receiver. Free out, along with priority berthing for U.S. carriers at Russian ports, was important to lower U.S.-flag rates.

Payment terms. Commercial voyages are paid upon leaving the load port whereas preference voyages are not paid until after arrival at the discharge port. There are frequent payment delays. However, MARAD has asked and USDA has agreed to pursue this issue as part of our longer term discussions.

Fumigation. These costs and delays are normally the charterer's responsibilities. Under preference they are the vessel owner's risk. USDA and MARAD agreed to pursue a dual rate system. We were unable to implement it in the short time available with the current Russian aid package, but future tenders will include dual rates. There will be further discussions with the Russians regarding who will pay the fumigation costs for the program.

Finally, vessel discrimination. Exclusion of vessel types, such as tankers or barges, lessens competition. USDA has issued a policy that importing countries may exclude tankers from carriage of 1993 feed corn. However, they are performing their own analyses and will examine the data. If the facts support a change, the Russians may wish to include tankers. We are planning to sponsor meetings between the feed corn representatives and tanker operators to review this issue, and we will continue to monitor this issue closely with USDA.

I am sure USDA will discuss the details of their agricultural agreement with Russia, but I would like to report on the outcome of key freight issues. Russia agreed to establish a joint U.S.-Russian working group which will monitor Russian port conditions on an ongoing basis. The group will be available to answer any questions U.S. carriers have as they develop their bids. We are closely tracking food aid shipments under earlier programs and will assess these vessels' experiences in unloading their cargoes. This information will be made available to the other carriers as they prepare bids. In other words, U.S. vessel owners will have a clearer picture of their true risks.

On the Russians' part, they will have an incentive to discharge quickly because they have been assured that any freight savings will be available to them for more commodities of their choosing. I think we have made significant strides in this regard.

Before I leave this subject I want to point out that MARAD and AID sent a team to scrutinize port conditions in Russia during ten days in May. They have reported congestion problems in Novorossiysk and St. Petersburg and a potential shortage of rail cars when the Russian harvest begins in July. If there are not enough rail cars and no storage facilities, ships will have difficulty unloading their cargoes. This is an area we will be monitoring very carefully. MARAD's ports expert will be returning to Russia June 12 as part of a U.S. Government mission to examine the ports and make rec-

ommendations on how to improve their efficiency. He will be on the spot for about three weeks, providing us with up to the minute reports on port conditions.

I have discussed our interagency efforts to solve problems in our preference programs. This is not a one shot thing. MARAD is committed to an ongoing effort. USDA and AID will join us in looking at the problems faced by both shippers and carriers. Some of the issues we will try to solve I have already mentioned. We will all work toward a preference program that serves the national interest as well as the agriculture industry and the maritime industry.

Now, I will briefly summarize the remaining part of my testimony. With regard to the Israeli Loan Guarantee Program, I would like to say that MARAD has most recently met with the minister of economic affairs at the Israeli embassy. Involved in those discussions was not only our staff but also representatives of the industry and the labor unions as well as people from the Department of Commerce, the Department of State, and from the subcommittee staff. We have been asked to prepare some wording to be included in Israeli bank loan documents that would restate the conditions of the guarantee program. In other words, the documents would restate that the purchase of U.S. goods and services is a consideration of the bank when issuing the money for whatever the money will be used for in Israel.

Finally, I would like to touch upon the regulation being considered regarding uniform charter party terms that would address, for example, the problems I mentioned earlier in relation to the Russian grain program. We are now trying to answer questions raised by USDA and AID over MARAD's authority under Section 901(B)(2) to issue such a regulation. It is our desire to resolve any problems quickly and to move forward with a proposal in the near-term.

Finally and most significantly, Secretary Pena and Secretary Espy have set the direction for cooperation on cargo preference issues. Our respective agencies are taking steps to deal with cargo preference issues for the benefit of agricultural producers, shippers and carriers. We at MARAD plan to move forward and not lose momentum as we begin discussions on longer-term issues. We intend to comply fully with the letter and the spirit of the law. That concludes my prepared statement, Mr. Chairman. I will be happy to respond to any questions you or the subcommittee members may have.

Mr. LIPINSKI. Thank you very much.

[The statement of Ms. Yim may be found at end of hearings.]

Mr. LIPINSKI. Mr. Goldthwait.

STATEMENT OF CHRISTOPHER GOLDTHWAIT

Mr. GOLDTHWAIT. Thank you, Mr. Chairman. I appreciate the opportunity to address the committee this afternoon, and with your permission I will ask that my full statement be entered into the record, and I will confine myself to just a few brief remarks about three or four areas.

Mr. LIPINSKI. Without objection, so ordered. Continue.

Mr. GOLDTHWAIT. I will touch on current cargo preference law, our cooperation with MARAD, which Ms. Yim has already described, the specifics of the Food for Progress Program for Russia, and certain of the costs that are associated with cargo preference. As my statement indicates, there is rather considerable background for current cargo preference law, and it is outlined fully in that statement.

Secretary Espy has said, and I repeat, that we, of course, intend to comply fully with the requirements of the law to the best of our ability. This applies as much to the initiative for Russia as to our other food assistance programs, and at no time did the administration consider a waiver for this specific program. I might indicate one or two things that are very particular about this fiscal year. It is, indeed, something of a banner year for carrying cargo preference cargoes. This is because USDA even before we get to the special program for Russia is programming between two and three million tons of food aid more than a year ago. If we add again roughly two to three million tons for the Russia program, we find that USDA is shipping something over five million tons in this fiscal year more than last year. I think that is probably the highest level going back two or three decades of cargoes subject to cargo preference requirements.

Turning for a moment to the cooperation that we have with MARAD and DOT, I want to join Ms. Yim in saying that I think we have started along a very good track and that we have evolved a very good working relationship. Recognizing the sensitivity particularly for the Russian program, MARAD approached us and asked us to inaugurate the working group and to join together to focus on those issues which could be better handled by a joint approach, especially those issues which might serve to hold down the costs and the risks of the use of U.S.-flag vessels. I think as Ms. Yim has indicated, we have successfully identified a number of issues.

I would go beyond her statement in saying that we have come to agreement on several things. We will encourage consecutive voyages, we will include certain changes in the charter parties, and we will, of course, continue to talk about other things that we can discover that will help to achieve the goals of efficiency and lower costs. I might point out in addition that a representative from MARAD joined some of our negotiations with the Russians several days ago when we discussed the elements and details of the Food for Progress Program, and in this particular case that was useful in underscoring the very strong concerns of U.S. vessel owners.

Secretary Espy and Secretary Pena have spoken a number of times about these various matters. Secretary Espy has also underscored his own strong concerns about cargo preference generally, but both Secretaries have set the tone for us to continue the working group's efforts in trying to find the best execution we can of current law, including cost minimization.

Turning specifically to the Russian initiative, the \$700 million food for progress package, I would note that we became concerned, as did the vessel owners, about reports of delays in Russian ports. There was a great fear that these delays would be—excuse me, that these concerns would be reflected in higher bids. We worked very,

very hard to obtain from the Russian side some assurances in this degree to help—to minimize these delays. This point was a central theme, if not the central theme of our discussions with the Russians in the negotiations I mentioned.

The Russian side objected greatly to departures that we were urging on them from the standard freight fixing terms that they have used for all of their commercial purchases from us, but in the end we obtained a series of commitments from them that I think give us strong assurance that there will not be undue delays in the discharge of cargoes in Russian ports. These commitments include a nondiscrimination guarantee for U.S. vessels, a guarantee signed by their deputy prime minister that the Russian side will facilitate rapid discharge in Russian ports, a confirmation that there will not be other large quantities of grain arrivals in the ports during the expected delivery period, provision of a full shipping schedule for the entire quantities that we are talking about at the time of the initial tenders for freight and commodity, and most importantly perhaps a point of contact for us and for the vessel owners within the Russian Government for raising any concerns related to delays.

I would not, of course, be a good representative of agricultural interests if I didn't include at least a word or two on the costs of cargo preference since many of these are borne by the Commodity Credit Corporation. My statement outlines some of our estimated costs, including the costs for this year which may be as high as \$286 million, about \$100 million of which will be related to the Russian program.

I will, of course, be absolutely delighted if our joint efforts working with MARAD, working with the Russian side can achieve savings below that level so that some of that funding can be used for additional voyages with additional commodity. It is also true that our food aid programs have a long-term market development impact and there are certain indirect costs imposed by cargo preference which tend to limit this impact. This occurs when the various freight requirements that we impose on countries lead them to choices other than those they might make in a purely commercial situation. There are also cases where use of some types of vessels can lead to lower commodity quality at discharge. However, I won't dwell on these particular points.

I will stop now and be happy to take any questions that you or other members of the committee may have. Thank you.

Mr. LIPINSKI. Thank you very much. We will get around to questions for you as soon as we hear from the third panelist, Mr. Sansone.

[The statement of Mr. Goldthwait may be found at end of hearings.]

STATEMENT OF WALLACE T. SANSONE

Mr. SANSONE. Thank you very much, Mr. Chairman. Good afternoon, members of the committee. I am Wally Sansone, Vice Commander of the Military Sealift Command. I am pleased to appear before you this afternoon to discuss the issue of cargo preference as it applies to cargoes for which the Military Sealift Command arranges ocean transportation. With your consent I would like to

submit my full written statement for the record and read a very brief summary at this time.

Mr. LIPINSKI. Without objection, so ordered.

Mr. SANSONE. Military Sealift Command, as a Navy component of the United States Transportation Command, is responsible for arranging ocean transportation for the Department of Defense. In carrying out its mission, MSC contracts for the annual movement of approximately 10 million long measurement tons of dry cargo and approximately eight million tons of liquid cargo. During the last year approximately 95 percent of all DOD cargo was carried on U.S.-flag ships.

There are, as you are well aware, several statutes which govern the ocean transportation of defense cargo. The 1904 Cargo Preference Act is the primary cargo preference law which we are bound by. Simply stated, this act provides that only U.S.-flag ships may be used for ocean transportation of supplies purchased for the military. In addition to the 1904 Cargo Preference Act, the Cargo Preference Act of 1954, or Public Law 664, is another law which we are bound by. For purposes of today's hearing I will focus on two categories of cargo which the committee has expressed a particular interest in.

In a hearing held by this committee on 30 September 1992, David Addington, then General Counsel of the Department of Defense, addressed the applicability of the 1904 act and the 1954 act to a number of humanitarian assistance programs and the Conventional Forces in Europe Treaty Implementation Act. MSC relies on the DOD General Counsel for guidance and interpretation of the provisions of the law.

Before I continue, I would like to place the humanitarian assistance and CFE cargoes in context. The entire volume of non-DOD cargo that is lifted by MSC is less than 1 percent of the total cargo transported annually. In all cases, even when it is determined that cargo preference does not apply, bids are still solicited from and contracts may be awarded to U.S.-flag ships. During fiscal years 1991 and 1992, even though cargo preference did not apply, more than 60 percent of this cargo was moved by U.S.-flag ships.

On behalf of the Defense Department, MSC has been tasked to arrange ocean transportation for certain DOD humanitarian assistance program cargoes. Based on the statutory language, the DOD General Counsel determined, and testified before your committee last year that certain cargoes were not subject to the Cargo Preference Act of 1904 and 1954 when transported in accordance with the following statutes—the Dire Emergency Supplemental Appropriations Act of 1992, Conventional Forces in Europe Treaty Implementation Act, and the National Defense Authorization Act for Fiscal Years 1992 and 1993. However, subsequent to Mr. Addington's appearance before this committee, the Fiscal Year 1993 DOD Appropriation and Authorization Acts were enacted. Those acts provide funds for the transportation of humanitarian relief for the people of Afghanistan and Cambodia and for other humanitarian relief.

The Authorization Act changes Title 10 of the U.S. Code, Section 2551 to provide that the Cargo Preference Acts of 1904 and 1954 "shall not be deemed to be waived." In consequence, the exemption identified by Mr. Addington regarding ocean transportation by the

most economical commercial or military means has been removed and therefore the 50 percent cargo preference applies for Fiscal Year 1993. Based on our preliminary data for the first six months of 1993, 68 percent of the humanitarian assistance cargo transported by MSC was shipped in U.S.-flag ships.

Mr. Chairman, in closing, let me say that the Military Sealift Command acting for the Department of Defense is and has been arranging for ocean transportation of DOD cargoes in compliance with all the applicable cargo preference laws. We share your concern with maintaining a viable U.S.-flag Merchant Marine.

Approximately 95 percent of the almost 20 million tons of peacetime cargo shipped annually for the Department of Defense moves on privately-owned U.S.-flag ships. We believe that the more than \$1 billion that we pay to the United States maritime industry per year contributes significantly to their financial health. DOD remains committed to the faithful execution of all the cargo preference acts to achieve the important objective of strengthening the U.S.-flag Merchant Marine.

In short, Mr. Chairman, we support cargo preference because cargo is the answer, both government-impelled and commercial, to a healthy and viable U.S. Merchant Marine. Mr. Chairman, that concludes my prepared statement. Thank you again for the opportunity to appear before this committee.

[The statement of Mr. Sansone may be found at end of hearings.]

Mr. LIPINSKI. I would like to thank you and all three of you for your testimony here this afternoon, and the Chair now recognizes for questioning Mr. Pickett.

Mr. PICKETT. Thank you, Mr. Chairman. Welcome lady and gentlemen. The issue here about government preference cargoes is one that it seems like a nonsequitur in a way that we are here asking government agencies why they are not interested in shipping cargoes in American ships, and there must be a dramatic difference between the costs of shipping in U.S.-flag ships on a preference cargo basis as compared to what the open market rate for shipping such cargo may be, and I don't see that information in any of the testimony here.

Is any one of the witnesses able to tell us what the difference would be between the rate roughly with the American carrier compared to what the open market rate for the transportation of similar merchandise would be?

Ms. YIM. You mean as compared to normal commercial charter terms rather than humanitarian assistance terms, because I think that has been the thrust of our work. There is a difference in terms of humanitarian assistance and the way that rates have to be calculated because the risks are so different under those terms as opposed to traditional commercial terms. That is one of the things we have been working on here, so if we were to compare what you might be labeling as normal world rates, it is a different type of category, I believe, of assistance.

Mr. PICKETT. I take it that applies uniquely to the kind of cargo that your agency is involved in, but I would like that information comparing the comparable contract rate that you could get on the open market to what you pay with preference cargo.

Ms. YIM. I can get that for you.

Mr. GOLDTHWAIT. Congressman, I have some information in that regard. The best measure of what you are asking for is probably the per ton ocean freight differential, and on average for all of the vessels that we fixed so far this fiscal year under the various USDA programs, that average has been around \$37 a ton.

Mr. PICKETT. So that \$37 represents the difference between what the open market rate would be, we will say, compared to the—

Mr. GOLDTHWAIT. It represents the difference between what foreign-flag vessels are being fixed at under the conditions of our program and what U.S.-flag vessels are being fixed at. As Ms. Yim points out, there are various reasons why the foreign-flag vessel fixings will also be a little higher than what prevails in the purely commercial market.

Mr. PICKETT. So you are saying that the difference is \$37 a ton; is that correct?

Mr. GOLDTHWAIT. That is correct.

Mr. PICKETT. A metric ton?

Mr. GOLDTHWAIT. Yes.

Mr. PICKETT. That is based on an American charge of, what \$50, \$60 a ton?

Mr. GOLDTHWAIT. The American fixings have ranged from—well, they have averaged about \$67 a ton this fiscal year so far.

Mr. PICKETT. So the comparable rate would be \$30 a ton for the open market?

Mr. GOLDTHWAIT. Yes, for the foreign-flag fixings.

Mr. PICKETT. And as I understand it the bulk carriers that are on the operating differential subsidy don't get their subsidy when they are engaged in carrying the preference cargoes; is that correct?

Ms. YIM. That is correct.

Mr. PICKETT. But then in the case of liner cargoes, the liner vessels continue to be eligible for their operating differential subsidy unless their overall cargo amounts exceed 50 percent of the preference cargo.

Ms. YIM. I have been concentrating on bulk carriers and tankers issues so much that I haven't really looked into the liner issues, so I am really not prepared to comment on that, but I do know that bulk carriers don't get a subsidy. This is preference cargo we are talking about.

Mr. PICKETT. The services that you get from other commercial carriers if you were to use them, are they comparable to the services that you get from American-flag carriers?

Ms. YIM. We think that that is one of the major differences in shipping on U.S.-flag vessels; you get more quality in terms of the vessel and the crews in particular. This is of particular importance to us because of the need to have these vessels and these crews ready in terms of our national emergency needs. We have an investment in that fleet, and this is why we support their use in this cargo preference program, as opposed to what is out there from other countries.

Mr. PICKETT. Anyone else want to comment on that?

Mr. SANSONE. I would just like to make a quick comment, Mr. Pickett. You indicated that the government does not support cargo preference, but I do, on behalf of the Department of Defense, sup-

port cargo preference because it does support the readiness of the United States to deploy forces.

With respect to the additional cost for cargo preference in utilizing American ships, as Ms. Yim said, there are differences, but generally speaking we can provide you with some costs for your committee.

[The information follows:]

COSTS OF CARGO PREFERENCE TO DOD

The Office of Management and Budget estimates that the cost of cargo preference to DOD for using U.S.-flag ships was \$343 million in FY 92. The estimate for FY 93 is \$363 million. This information is provided to the Congress in the President's budget submitted by OMB.

Mr. PICKETT. All right. Thank you. Thank you, Mr. Chairman.

Mr. LIPINSKI. Thank you, Mr. Pickett. The Chair now recognizes Mr. Bateman.

Mr. BATEMAN. Thank you, Mr. Chairman. Mr. Chairman, I do have some questions. I would like for the record to remain open in order that I might submit them in writing in view of the fact that I am now 15 minutes late being somewhere else to make a speech. I will get back as soon as I can unburden myself of that and ask that the record remain open in the event I can't get back.

Mr. LIPINSKI. Absolutely.

Mr. BATEMAN. Also, Mrs. Bentley is in markup in another committee and has asked leave to submit questions in writing in the event she can't get back.

Mr. LIPINSKI. She will certainly be allowed to do that also. Thank you.

Mr. LIPINSKI. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. My question is for Ms. Yim. I am curious, going to page 6 of your testimony when you are talking about the exclusion of tankers from carrying corn feed stock, is that our decision or the Russians' decision? I hate to—I think the answer to that is, if I read your testimony correctly, it is the Russians' decision, and I am kind of curious why are they given the right to reject how we deliver a gift?

Ms. YIM. Actually I would like to defer to Mr. Goldthwait to respond to that.

Mr. TAYLOR. I will welcome anyone on the panel. It was a statement from your testimony.

Ms. YIM. That is right, it is my testimony. I think that the 1993 feed corn is, as it has been presented to me by the U.S. Department of Agriculture, in fragile condition to begin with because of the weather that affected it and the fact that it had to be dried artificially. Trying to ship top quality feed corn that would be resold by the receiving country has been uppermost in the mind of the agricultural interests in terms of shipping. Our working group put this on the table and is still working at trying to find a way to make sure that the shippers, the carriers, are not the ones that are blamed 100 percent if there is damaged corn, and so we are looking at the whole process of the preparation of the corn, the actual shipping of the corn, and the handling of the corn in all the different steps between when it leaves the producer to when it gets to its ul-

timate destination. We are still working on this whole issue of feed corn and tankers as transport.

As far as who made the policy decision with regard to this particular Russian grain shipment, I would like to defer to Chris on that.

Mr. GOLDTHWAIT. Congressman, I would first of all make the point that this is not a donation. We are not giving the commodity to the Russians.

Mr. TAYLOR. How many times have we been paid, Mr. Goldthwait?

Mr. GOLDTHWAIT. They are buying it on a concessional basis.

Mr. TAYLOR. But, again, what is the status of the payments so far?

Mr. GOLDTHWAIT. The payments for this program have not begun yet.

Mr. TAYLOR. So therefore it has been a gift so far?

Mr. GOLDTHWAIT. Well, the corn hasn't moved yet.

Mr. TAYLOR. OK. But the previous so-called loan guarantees have not been repaid, have they?

Mr. GOLDTHWAIT. At the moment Russia is current for their payment for the loan guarantees that Russia acknowledges as Russian. There is an arrearage of a considerable magnitude on those loan guarantees for the former Soviet Union.

Mr. TAYLOR. So like when my wife uses the Visa card it is not my bill?

Mr. GOLDTHWAIT. No, it is clearly their bill and they are committed to repaying that under the terms of their recent rescheduling agreement by the end of this month.

Mr. TAYLOR. Let's get back to the tankers. I am curious.

Mr. GOLDTHWAIT. The decisionmaking mechanism for this is as follows: We at the Department of Agriculture have the authority to evaluate the appropriateness of particular kinds of vessels for particular uses. In this particular case because of the quality aspects of the 1992 crop corn that Ms. Yim has described, we made the decision that the Russian buyer would have the option of excluding tankers. Now, in point of fact I think this is a decision which was well reasoned because earlier in the fiscal year three cargoes did move on tankers.

We have received quality complaints related to two of those three movements, and in point of fact in each case the damaged—the portion of damaged or broken kernels increased quite considerably. In the first case it went from a little under 3 percent to between 14 and 17 percent, and in the second case it went from between 3 and 3.7 percent to between 12 and 25 percent with a little bit of rounding, so I think we have a very good basis for concerns about quality.

Mr. TAYLOR. Does that occur in the loading, in the unloading or in the actual shipment itself because of the inability to, say, ventilate the hull?

Mr. GOLDTHWAIT. It occurs throughout the process. I am not an expert on vessel configuration, but as I understand it in loading and unloading tankers, the corn strikes a great number more hard surfaces, and when it is in a brittle condition as in this case, it is subject to considerable additional breakage.

Mr. TAYLOR. I noticed again, Miss Yim, getting back to your testimony that there is a trip planned for the 12th of June to the former Soviet Union to check on the reports that we have had of tying up the ships at the port, lack of rail cards, et cetera. What progress do you expect to find over the previous visits that have been made there?

Ms. YIM. Well, actually Mr. Carnes is present here. On his first visit, he found serious port congestion. The problems are related to a couple of factors. One is the fact that we are no longer dealing with the U.S.S.R., and so some of the port infrastructure is, let's say, in Estonia now. They are not in the CIS. Russia has its own policy now to bring in its shipping to its own two ports that seem to be the major ports of St. Petersburg and Novorossiysk. So that is why we expect to continue to find port congestion, because they are not allowing—or not encouraging their own shipping to go to alternate ports, whereas before there were a number of alternative sites within the whole of the U.S.S.R.

Secondly, when it comes to commodities like grain, it is very important that the rail cars be there at the ports to take it them off because there are no storage facilities. In our working group we started to talk about options for storage that we might want to talk to the Russians about, but we did not get as far as dialog between the Russians and the working group. So, as it stands now, we expect that we are going to find the rail cars starting to move away from the ports and not be as available as they would have been in earlier months. That is because the Russian crops are coming in themselves, and the rail cars are needed for their own domestic crops.

One of the things we did talk about, though, in the working group and did discuss with the Russians was spreading out the shipments more so that we would have more certainty in booking times to enter the ports. One of the delay problems is that you have to, under the Russian system, actually book your time when you are going to come into the port. That is one of the things I am going to be talking about tomorrow afternoon at a meeting I have called of the various interests involved in this effort. The shippers, the labor unions, they are all coming to our offices, and I am hoping to brief them on some of the things we learned from the Russians about how you go about just doing business with them, now because the ports are somewhat independent now as well.

Mr. TAYLOR. I am just curious, Miss Yim, I think you have touched on something that is—why would we even ship at a time when they are harvesting their crop?

Ms. YIM. Because the President promised that we would get this shipment off to them as soon as possible, and I believe there may be a history that Chris wants to elaborate on.

Mr. GOLDTHWAIT. I make two points. First of all, the Russians traditionally throughout the year need some level of imports, and what they are, in fact, receiving under this program during the delivery period of roughly July through September, again, it could go a little later into the fall, is a very, very small delivery schedule by historical standards. Roughly 2.5 tons, maybe 2.8 million tons depending on exactly how the pricing will work out, but not more than 3 million tons. In point of fact the Russians—and I am a little

more optimistic about the port situation because the Russians have provided information indicating that their own ports have the capacity to take over 2 million tons of grain per month in terms of discharge capacity, and they have committed themselves to addressing the rail car situation, so while there are, I think, some concerns out there, I am considerably more optimistic about the port congestion problem.

It is true that there is a rather heavy delivery schedule between now and the end of June, maybe the first week of July.

Mr. LIPINSKI. Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

My first question is to Mr. Goldthwait concerning that in 1991 the Department of Agriculture exports showed that about 4 percent of U.S. agriculture exports were on U.S.-flag ships. Do you think that is still about the same percentage in 1992 or do we have later numbers for that?

Mr. GOLDTHWAIT. I think this year fiscal year 1993 it will probably be a little higher than that, but I could not give you the precise percentage. I will be happy to provide that for you, though.

Mr. GREEN. OK. I would like that if it is available. Also, we have a copy of an article from the American Maritime officer that said that somebody in the Department of Agriculture said that all the suitable U.S. vessels—there are not suitable U.S. vessels available for the shipments of the Russian grain. Is that true? Is that statement made by the Department of Agriculture?

Mr. GOLDTHWAIT. I am sorry, the statement?

Mr. GREEN. A report from the American Maritime officer said that USDA, which said it had exhausted its transportation budget under a congressionally imposed cap, also contended that suitable U.S. vessels were not available for the shipment despite evidence to the contrary.

Mr. GOLDTHWAIT. I am not familiar with any statement by one of our officials along those lines.

Mr. GREEN. OK. We will give you copies of this. I was wondering, I had never heard that before that we didn't have enough vessels available except for maybe the controversy on the tanker issue.

Mr. GOLDTHWAIT. I think that is probably the only point. As far as I know so far this fiscal year, we are running at or very, very close to the 75 percent requirement.

Mr. GREEN. OK. The other question I wanted to ask is for Miss Yim concerning, from my understanding, and being a freshman on the committee, most other maritime nations have cargo preference requirements, and I think this question has been asked previously of other witnesses, but the United States is not unusual in having cargo preference requirements?

Ms. YIM. No.

Mr. GREEN. Do you know of any stations that do not have cargo preference requirements?

Ms. YIM. Well, I don't think the question is usually posed that way. It is usually, "What ones do have them in some way?" They all have something that deals with this type of thing.

Mr. GREEN. I guess the follow-up on that would be I am always amazed because I represent the port of Houston, and when I see the numbers there are only about 15 percent of the cargo that

comes through the port of Houston is U.S.-flag vessels. I don't know if that is true nationwide, but I would imagine I could go to any maritime country in the world and see it be much higher outside of cargo preference which we are talking about today. It just seems like there should be a great deal more effort, and I know you are involved in that directly on increasing those percentages, not just in the port of Houston, but in other ports.

Again, being a freshman and learning all I have for five months here I am still learning a lot about cargo preference and the reservation laws and practices, but I look forward to working with you on it. Thank you, Mr. Chairman.

Mr. LIPINSKI. Thank you, Mr. Green.

Ms. Furse.

Ms. FURSE. Mr. Chairman, I don't have any particular questions except just to thank you for holding this hearing. I think this is very, very important. I think we are going to look more and more at this as we go through this year. It is obviously of enormous importance to my district. We have three ports in my district, and therefore these are—and we ship a lot of grain, so thank you, Mr. Chairman, for the opportunity to hear the witnesses.

Mr. LIPINSKI. Thank you. I have just one question—we have so many problems with this cargo preference. I say problems because there are elements of our society that insist that governmental agencies are working against them getting cargo preference, and in all honesty it seems to me that there is a problem along those lines. It seems to me, though, the reason for the problem is that we have so many government departments involved in this program, and cargo preferences are advantageous to department A, department B is neutral on it, department C is against it, et cetera. Has there been any discussion? I would like all three of you to answer this, and I am certainly going to talk to the State Department about it, too, when they come over.

Has there been any discussion, thought, consideration of trying to establish some czar over this situation whereby everyone could focus upon one entity or one individual in making these decisions, because it really makes it very difficult for the entire industry and for us who are charged with the responsibility of overlooking this program, and you folks have the responsibility pretty much really of administrating it and operating it. It just seems to me there is a practical resolution to these problems if we could come up with some kind of overall individual or entity that would make the decisions here. It would help expedite the entire process for the benefit of American shippers, American working men and for America in general. Who would like to be the first one up to bat on that question? Ladies first again.

Ms. YIM. OK, I will do it. Actually I think I want to answer that on two levels. First of all, as the representative here from the Maritime Administration of the Department of Transportation, the Department of Transportation, a part of our mission, is to be the lead on cargo preference laws and implementing them and monitoring compliance with them. I think that as the administration is changing into the new administration, we are taking a good close look at that mission and responsibility.

Now, as part of that effort we have instituted these working groups, and our first one, of course, is with the USDA on the aid to Russia issue. However at the same time, we said that we were going to deal with the longer-term, broader issues and expand our working group to include other agencies. We are now in the process of brainstorming how we are going to do that. We have put on the table a number of issues that we want to look at, including the whole structure of cargo preference and how it is administered because I think we are coming out in support of the cargo preference laws as they are, and we want to make the system that administers those laws more efficient and more cost-effective, so we are looking at the broader issues as well.

Mr. LIPINSKI. Well, you are charged or had the responsibility to take the lead on these cargo preference issues, but if the Secretary of Transportation makes a decision in regards to it, these other departments don't necessarily have to go along with you. They can make their own decision and disagree with them and then we do not have their cooperation, their participation. I guess that by serving on this committee, and serving on Public Works and Transportation, I am very partial to the Department of Transportation, so I would be more than happy to see you continue to take the lead, but I think it is really necessary for us to get some kind of teeth into the overall issue. Whether it is the Department of Transportation or one of the other departments or if it is a new position that is created, I think we have to have someone that can make the decision for the administration and everyone then falls into line. I guess this is what I am really—I guess—and I realize you are all in a difficult position to fully comment upon this, but I mean it just seems to me the more and more I get into this issue, one of the biggest problems is that there are decisions made and then other departments do not cooperate with it.

I am asking are there any discussions going on to either try to give the Department of Transportation or one of the other departments a final say so on this or to create some other party perhaps in the White House that would make a final decision on this kind of stuff?

Mr. SANSONE. Mr. Chairman, I would like to comment on your question with three brief points. One, we recognize in the Department of Defense that the Department of Transportation with the Maritime Administration's lead is the lead agency for government cargo preference compliance. Point number two, there are different interpretations of the statute, and when that happens the Department of Justice is available to resolve those differences. Those are rare. As I said, we have a very close working relationship with MARAD on the compliance issue.

The third point I would make is that we, in the Department of Defense, support cargo preference because we know it is so vital to maintaining a U.S.-flag Merchant Marine which we require in time of national emergency, so we do everything possible to endure our compliance with the statutes passed by the Congress.

Mr. LIPINSKI. Would you like to comment also?

Mr. GOLDTHWAIT. Yes, if I could, Mr. Chairman. First of all, I want to make clear that with respect to the execution of the cur-

rent law we want to work very closely with DOT. We are, after all, one administration.

Secondly, however, with respect to the point of whether or not there should be a czar, there are some structural difficulties which present themselves. For example, the lead agency on cargo preference questions is clearly MARAD within DOT, but the funds that are expended and the accountability for how those funds are expended oftentimes come out of my agency or another agency, and so there are some concerns since ultimately we are accountable to the appropriators for the levels of spending on some of these programs. So I will just indicate that there are difficulties of a structural nature that need to be looked at as well here.

Mr. LIPINSKI. I agree that there are difficulties. There is no question about that. I was talking about four departments and then Mr. Sansone talks about get the Justice Department involved in this also. Now we have five departments involved in this. I have a feeling that a lot of this produce is going to rot in the fields of America before it gets to any foreign country with the bureaucracy we have to go through. Well, I understand.

Ms. YIM. If I could just add one thing to that. In the past there have been Presidential directives and other types of statements like that issued by a President, and that is one of the things we are looking at in terms of our long-term working group is something that would try to get to the very heart of that problem, but within the administration.

Mr. LIPINSKI. Yes, I had sent a letter to the President asking him, as you are very well aware of in regards to this matter. I see all the lights are off on that over there, so I must have a lot of time. It must be a courtesy to the Chairman. I didn't notice they went off for anybody else. I know Mr. Taylor has a number of questions he wants to ask. I just wanted to ask another question at this time. I have many questions which I am going to ask you to answer in writing, as does Mr. Bateman and Mrs. Bentley in the event they are not back, but getting back to this situation with Russia and the last time that we had this program. Now, you say that it has been restructured. Have they paid any money to us?

I understand they are restructuring it, but have they made any payment to us?

Mr. GOLDTHWAIT. You are speaking of the—well, it was a different program. It was a commercial program that we were using earlier which obviously had much more stringent payment requirements. Yes, they have made some payments in recent weeks.

Mr. LIPINSKI. In recent weeks?

Mr. GOLDTHWAIT. Yes.

Mr. LIPINSKI. How recent are those weeks?

Mr. GOLDTHWAIT. Well, payments are coming in on an ongoing basis on a portion of the debt that is involved.

Mr. LIPINSKI. Could you give me a percentage of how much they haven't paid or how much they have paid so far.

Mr. GOLDTHWAIT. I couldn't give you percentages off the top of my head, but before the default occurred last fall they had paid over \$800 million of the exposure that we had, and as I said earlier they are committed to catching up on the payments for all of the debt which has not been rescheduled by the end of this month.

Mr. LIPINSKI. By the end of this month?

Mr. GOLDTHWAIT. That is correct.

Mr. LIPINSKI. Of that \$800 million they have repaid, what was the total amount?

Mr. GOLDTHWAIT. That was roughly—a little less than one quarter of the total exposure we had at that point in time.

Mr. LIPINSKI. Are you talking about that this was with the Soviet Union, and now we are dealing with Russia, and Russia has said that they will pay back what they owe. Are they taking a responsibility for what other former republics of the Soviet Union and now nations themselves in the Soviet Union may owe?

Mr. GOLDTHWAIT. Russia has taken full responsibility for all of the former Soviet Union debt.

Mr. LIPINSKI. Do you have any idea what the other nations are that were formerly part of the Soviet Union that owe money on this?

Mr. GOLDTHWAIT. Well, since Russia has assumed responsibility, legally speaking none of the others owe anything to us right now.

Mr. LIPINSKI. Could you tell me what former republics, now nations, might owe Russia something?

Mr. GOLDTHWAIT. Well, I think the arrangements between those governments and the Russian government are basically an exchange of assets on the part of all of those governments for the assumption of the debt by Russia. In point of fact, in terms of the use of the commodities, Russia received, I would say, just a hair over half, so Russia has, in effect, assumed responsibility for roughly—for the former Soviet Union imports of roughly twice what was consumed within the present day Russia, a little less than that.

Mr. LIPINSKI. OK. So for some reason you don't want to tell me who those other nations are, other republics are, and I will drop the subject.

Mr. GOLDTHWAIT. I can list them for you, Ukraine, Belarus, Kyrgyzstan, Tajikistan, Armenia, Georgia, Azerbaijan, Turkmenistan.

Mr. LIPINSKI. That is it?

Mr. GOLDTHWAIT. There may be one or two others. There are 12.

Mr. LIPINSKI. That is what I was after. If you would have said that in the first place, we would have been much more direct.

Mr. GOLDTHWAIT. I am sorry, I misunderstood.

Mr. LIPINSKI. Perhaps I was too diplomatic.

Mr. PICKETT, it is your turn.

Mr. PICKETT. No questions.

Mr. LIPINSKI. Mr. Taylor, I am sure you have a couple questions.

Mr. TAYLOR. A couple quick ones. Mr. Sansone from DOD, in your testimony you talk about how a previous general counsel of the DOD had ruled that the cargo preference laws did not count for the DOD based on the determination that the most economically commercial or military means available. What is the present position of the Department of Defense with regard to this?

Mr. SANSONE. It is the same as it was when Mr. Addington testified before the committee in September, but I would hasten to point out that—and I did mention it in my brief remarks, we think it is kind of a moot point because we advertised to U.S.-flag ships, and they carried more than two-thirds of the cargo I think I men-

tioned, so that 50 percent was complied with even though the legal determination was that there was no cargo preference.

Mr. TAYLOR. No, that is fine and good. I am talking about in the future, and, of course, there will be other general counsel. I would sure like to see that law, if need be, redrawn so that it is abundantly clear that we are talking about the most economical means available within the United States.

Mr. SANSONE. I think at that hearing Mr. Pickett asked a question about how to fix this problem, and David Addington offered the solution. The committee then went forward and fixed the 1993 authorization, and that is why, in his interpretation, we now see DOD applying all applicable Cargo Preference status to Fiscal Year 1993 lifts.

Mr. TAYLOR. I think that is only good for one year because it is an authorization bill.

Mr. SANSONE. Yes.

Mr. TAYLOR. I want to open this up to the panel. In a hearing before the Armed Services Committee last year, Robert Strauss talked about the transportation problems within the Soviet Union. I think he went as far as to say that between 80 and 90 percent of all the crops are left rotting in the field for lack of transportation. How much of what we are shipping to what was the Soviet Union never reaches its intended destination? Do we even bother to look?

Mr. GOLDTHWAIT. I might comment. With respect to commercial purchases, we have no reason to follow up and to investigate, but with respect to the shipments under our concessional programs, the Russians will be required to give us detailed reports as to the movement and usage of the commodities.

With respect to the 80 percent figure that is, in my judgment, much too high. I believe that if you look at the entire chain of distribution you will find that their losses are several times the 2 or 3 or 4 percent you might find in this country, and they would be more in the range of 20 to 30 percent in toto. It is also true that within Russia and the other countries of the former Soviet Union the transportation from the ports to the particular population centers which traditionally have been very, very dependent on imports are somewhat better so that there is considerably less loss of imported commodity than there is of their own domestically produced commodity.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. LIPINSKI. Thank you, Mr. Taylor.

Mr. Green.

Mr. GREEN. Mr. Chairman, I just have one question. Miss Yim, I know in your testimony you talked about the difference in why commercial voyages are paid upon leaving the port whereas cargo preference voyages are paid once they are completed. Why does that happen or why did it start and why do we continue so much different from commercial activities?

Ms. YIM. Well, as I understand it, the difference is that it is the American government that is paying the bill on the humanitarian aid. It is through a government-type of program, and so the governments have decided to pay at the end of the voyage rather than at the beginning. I am sure Chris could elaborate on some of the ra-

tionale behind the USDA policy on that. It was something we have brought up in the working group.

In this case it was too late to really get that on the table with the Russians, but we are starting to look at some creative ways of getting guarantees so that half of the payment would be upon departure and half upon delivery. We are looking at options to change those terms.

Mr. GREEN. I think that would be good because we have all heard the check is in the mail, and once it is delivered it is there.

Ms. YIM. That is right. Again, because of the comparison between normal commercial terms and these types of terms, what we are trying to do is make humanitarian aid terms are far more similar to the commercial terms and thus reduce the risk for the shippers.

Mr. GREEN. I appreciate that. Thank you. Thank you, Mr. Chairman.

Mr. LIPINSKI. Do we have any other questions from the Members?

Mr. TAYLOR. Mr. Chairman.

Mr. LIPINSKI. Mr. Taylor.

Mr. TAYLOR. I am just curious, going back to the law that provides whenever the United States buys goods, I want to open this up to the panel because I don't really know whose jurisdiction this would fall under, the oil for the strategic petroleum reserve. Is 100 percent of that delivered on U.S. bottoms? Miss Yim, could you tell me? I guess it would fall under the DOT?

Ms. YIM. Well, it is joint with DOD actually.

Mr. SANSONE. Military Sealift Command contracts for vessels to move the strategic petroleum reserve, and the law requires at least 50 percent of that cargo to move in U.S. bottoms.

Mr. TAYLOR. OK. So it is just 50 percent?

Mr. SANSONE. Yes, sir, at least 50 percent.

Mr. TAYLOR. Is anything being done by the Department of Defense as far as speeding up the implementation of the Oil Pollution Act of 1990 with regard to double-hulled tankers? Do you intend to comply with it but no sooner than you have to or you don't intend to comply with it or what is the MSC's position on that?

Mr. SANSONE. Well, MSC's position is that we are in compliance with the Oil Pollution Act because the ships we charter for point-to-point transportation, which is the movement of 8 to 10 million tons a year, are all privately-owned U.S.-flag ships, and they are in full compliance with the Oil Pollution Act of 1990, so we are in compliance.

Mr. TAYLOR. But there is no self-imposed movement to get double hulls sooner than you have to?

Mr. SANSONE. We rely on the industry to charter those ships, yes, sir.

Mr. TAYLOR. Thank you, sir. Thank you, Mr. Chairman.

Mr. LIPINSKI. Do we have any other questions for the panel? I guess not.

As I mentioned, Mrs. Bentley, Mr. Bateman, and I also have a number of questions that we are going to submit to all of you. We would appreciate answers, but in light of the fact that you have been up here testifying for the last hour and a half, and I would

like to—I would like to go to the White House this evening for the picnic that they are having, and I also would like to prepare my defense for not losing my subcommittee chairmanship for tomorrow's caucus. I am going to excuse you and express my sincere appreciation for your testimony here today, but as you leave the table let me say once again to you that the members of this committee are extremely interested in this issue, and we really would like to have the cooperation of all the departments to foster cargo preference, and I, for one, intend to continue to monitor the situation and advocate my idea of coming up with some high commissioner or czar to get these decisions made and get them made quickly. Thank you very much for your attendance today.

Mr. GREEN. Mr. Chairman, a point of clarification.

Mr. LIPINSKI. Yes, Mr. Green.

Mr. GREEN. Did you say you were going to prepare your defense at the White House this evening?

Mr. LIPINSKI. I would assume the President would be in support of my position.

Good afternoon, gentlemen. It is nice to see both Mr. Shapiro and Mr. Vlandis back with us once again. I think if you make four or five appearances here, you become a permanent member of our subcommittee, but I do appreciate you both being here, and for the sake of the record, even though we all know each other by this time, I want to mention that this panel is the bulk vessel operators, and we have Mr. Philip J. Shapiro, the President and CEO of the Liberty Maritime Corporation, and we have Mr. George W. Vlandis, Senior Vice President, Chartering, OMI Corporation. Thank you very much for being here, gentlemen, and who is going to start off testifying? Mr. Shapiro.

STATEMENTS OF PHILIP J. SHAPIRO, PRESIDENT AND CEO, LIBERTY MARITIME CORPORATION AND GEORGE W. VLANDIS, SENIOR VICE PRESIDENT, CHARTERING, OMI CORPORATION

STATEMENT OF PHILIP J. SHAPIRO

Mr. SHAPIRO. I guess I have been nominated, Mr. Chairman. I would like to also introduce Thomas L. Mills of Dyer Ellis Joseph & Mills, who is counsel to our company and Jonathan Blank. Jonathan, do you want to give your firm name.

Mr. BLANK. I am with the firm of Preston Gates Ellis & Rouvelas Meeds, representing OMI Corporation.

Mr. SHAPIRO. Mr. Chairman, if it is OK with you I would like to submit my written statement for the record and give a brief oral statement.

Mr. LIPINSKI. Without objection, so ordered.

Mr. SHAPIRO. Thank you. Mr. Chairman, Liberty Maritime Corporation is the largest independent operator of U.S.-flag dry bulk vessels. We operate six vessels, including five 64,000 deadweight ton dry bulk carriers and one tanker. Our vessels are primarily engaged in the U.S. preference trades, although our vessels also compete in the foreign commercial markets around the world. Our vessels routinely transport food aid shipments to Russia and the other ex-Soviet republics, with the Liberty Star having just completed

the discharge in Estonia of a cargo destined for Belarus only nine days ago.

I welcome the opportunity to discuss the ocean transportation aspects of the Russian Food Aid Program. I know I speak for the entire American-flag bulk industry when I say that we support and appreciate President Clinton's decision to retain cargo preference with respect to the pending Russian aid program. As you know, cargo preference has received a great deal of attention in the press over the last few months. Unfortunately, much of the information imparted has been inaccurate or wrong. I appreciate the opportunity to correct the record before you today.

Possibly the greatest distortion that has appeared in news accounts is that American-flag vessel owners increased their rates in response to the news that there would be a Russian aid program. Nothing could be further from the truth. American-flag rates, like foreign-flag rates, are determined by the market, and I can assure you from personal experience that the competition among American-flag owners for food aid cargoes is fierce.

The reality is that American-flag rates and foreign-flag rates rose in the spring in response to market pressures. For example, in January, a Cypriot-flag vessel transported 51,000 metric tons of corn to Poland under the Food for Progress Program for \$16.75 per metric ton. The commercial rates quoted at the time for shipments to the former Soviet Union were comparable. By early April, three foreign-flag vessels registered in Malta, Panama, and Cyprus transported 27,000, 26,500, and 56,500 metric tons of corn to Russia for \$37.75, \$37.75 again and \$25.50 per metric ton respectively, a weighted average of \$31.45 per metric ton, almost exactly double the January rate which was charged. In fact, with respect to recent tenders for Kyrgyzstan and Armenia, some of the foreign-flag bids actually exceeded some of the American-flag bids.

What is particularly frustrating for American-flag operators is that despite these facts, critics continue to quote bids as if they were fixed rates. For example, I refer to the so-called \$138-a-ton bid in particular, which has been quoted over and over as if it were representative of American-flag rates. The \$138 figure is no more an indication of American-flag rates than the Dow Jones average. The \$138 was the highest, not the lowest bid. In other words, the \$138 bid was a nonevent. It was an unsuccessful bid by a company.

What has also been frustrating is to see in news accounts stories that the fair and reasonable rate methodology employed by the Maritime Administration is a sham. Mr. Chairman, all a reasonable person has to do is to review the docket leading up to the adoption of the fair and reasonable rule. That process lasted four years and contained three separate Maritime Administration proposals and hundreds of pages of comments. In the end, the Office of Management and Budget played a commanding role in insisting that the methodology be written in the form it is today.

Moreover, the rule requires the submission of extensive and I might add very sensitive cost information to the government by each operator. Annual and voyage information must be provided. Every cost item we have in a voyage is covered, and as an extra precaution, the Inspector General of the Department of Transportation audits everything.

Now, I am not here to defend the fair and reasonable rate methodology. In fact, we are on record as requesting that the methodology be revised. Nevertheless, I do not believe that anyone can reasonably argue that it is a system without integrity. It is a rigorous methodology and it is vigorously enforced.

Having discussed the general rate situation I would like now to turn to the problems American-flag owners continue to face in the former Soviet Union that add unnecessarily to American-flag rates. Let me give as an example the recent experience of the Liberty Star. The Liberty Star was chartered on March 17th to transport 57,500 metric tons of corn to Belarus via Estonia pursuant to the Food for Progress Program. As with many cargoes to the inland republics of the former Soviet Union, the cargo was to be delivered to Tallinn, Estonia, and then overland to Belarus because Belarus has no ocean ports.

Unlike most of the other shipments to the former Soviet Union, this cargo was chartered on the basis of terms similar to what prevails in commercial practice. Hence, our very competitive rate of \$41.63 per ton, only a few dollars more, I might add, than the foreign-flag rate.

Prior to being loaded on or about April 15th we learned from authorities in Estonia that Belarus had made no arrangements with the Estonian port authorities to store or transship the cargo. Indeed, the port authorities in Estonia informed us that the Belarussians had made no discharging arrangements for the Liberty Star at all. We communicated this to their U.S. purchasing agent and requested that Belarus cancel or delay the shipment until discharging arrangements could be made. Unfortunately, Belarus' agent here ordered us to load the cargo and to proceed to Tallinn anyway.

On May 4th, the Liberty Star arrived in Tallinn as required by its charter. Indeed, the Estonian port authorities informed us that they would not be able to commence discharging the vessel until late May or early June, a potential delay of 40 to 50 days. To make matters worse, the government of Belarus refused to accept the Liberty Star's notice of readiness and arrival after the vessel arrived in Tallinn. In effect, the government of Belarus refused to commence the time period, known as lay days, for the calculation of liquidated damages or demurrage for delay. In other words, our vessel would sit and wait in Tallinn without any compensation for delay, even though we had fully met all of our obligations.

Finding the delay unacceptable, we immediately contacted the U.S. Government and the governments of Estonia and Belarus to break the logjam. We received considerable support, I might add, from the Maritime Administration and from concerned persons on Capitol Hill. Quite frankly, the initial response from the U.S. Department of Agriculture was that our predicament in Estonia was a commercial matter, since our charter was with a foreign government. Having heard that many times before, I cannot say that I was surprised. Prompted by congressional prodding, however, USDA finally did weigh in. Together with help from MARAD and the people on Capitol Hill, we managed to speed the berthing process and get the vessel discharged by June 1st for a total of 28 days or 20 days more than the charter had originally contemplated.

The Liberty Star case is illustrative of the problems faced by American operators even when the charter party terms are favorable or are nearly commercial, as was the case with the Belarus charter. American operators have very little in the way of remedies even under such charters. If the charterer chooses to ignore the charter terms, as Belarus clearly did, by refusing to accept the notice of readiness, the only practical remedy that an American-flag operator has is to engage the U.S. Government for assistance. Unfortunately the government agencies with the most leverage over the recipient countries, USDA and AID, have often been reluctant to intervene. The result is that the American owner has to spend considerable management time and resources to limit the losses resulting from discharging delays, as occurred with the Liberty Star. Even after expending such time and resources, the end result is often a considerable and costly delay.

What must occur and what we believe that MARAD and USDA have already begun taking steps in the right direction is for the shipper agencies to cooperate on solutions to approve the efficiency of food aid transportation. Bulk vessel operators make a fixed price bid months before the scheduled shipment, reflecting their assessment of the probable situation in the load and discharge ports at the time the voyage will be made. Where operators can expect quick and efficient loads and discharges, American-flag operators offer rates generally competitive with flag of convenience operators.

The use of commercial charter terms, priority berthing in government-to-government food aid shipments and hard-nosed political pressure will go a long way toward ensuring quick loads and discharges, which are the key to reducing the ocean freight differential between U.S. and foreign-flag operators. Where chaos is the rule, as is the case with the *Liberty Star*, high rates will be the rule. While we are not entirely satisfied with the results of the recent negotiations concerning Russian aid, we are hopeful that the new spirit of cooperation between USDA and MARAD will help alleviate some of the problems which we face.

We are also encouraged by Secretary Espy's remarks last Friday to the effect that Russia has agreed to take steps to facilitate rapid discharges. In any event, Mr. Goldthwait stated here earlier that the deputy foreign minister of Russia had assured our government that U.S. ships would be rapidly discharged in Russian ports. Since there are only two Russian ports with limited and overburdened capacity it would perhaps have been wise for USDA to include in the negotiations the Estonian and Ukrainian authorities which happen to have jurisdiction and control over the two major ports which allow access to the Russian republic, as well as the majority of other Commonwealth States. Without their cooperation, the Russian deputy minister's commitment means little at best.

We look forward to working with Secretaries Pena, Espy and Christopher as well as incoming Maritime Administrator Herberger, Acting Administrator Yim and other members of the administration to ensure that American food aid reaches Russia efficiently and economically in accordance with the cargo preference laws. We also look forward to working with the agricultural community in support of President Clinton's Russian aid package, in-

cluding the provision of food aid subject to both buy-American and ship-American requirements.

I might also add that I noted that Mr. Goldthwait mentioned that the President didn't consider a waiver of the cargo preference laws. On the contrary, it was the U.S. Department of Agriculture that lobbied the White House and recommended a waiver, and it was the President who rejected that recommendation. We are as operators delighted that USDA is going to finally look at requiring consecutive voyage charters. We have been urging, together with other companies, USDA and AID, along with MARAD to adopt this program for over five years.

Mr. Chairman, all of these problems are not new. They have been around for many, many years. We believe that this new commitment by USDA to look at consecutive voyage charters is a reaction to your committee's oversight of these issues. With regard to USDA corn and tankers, I might only add that when we discharge from a modern bulk carrier we discharge into two-and-a-half-ton rail cars. The amount of surface area that the cargo is exposed to is probably almost as much surface as it is exposed to in a tanker during a discharge. The only difference is that for tankers it is often necessary to use vacuators in order to suck the commodity out of the cargo tank because of the depths of the cargo tank and the access is a limited opening. It seems to me that tankers should be able to carry corn, and I urge all of you to keep the pressure on the people at USDA to keep tankers eligible for the carriage of corn.

Finally, I would only note that, Mr. Chairman, your statement that maybe we should be looking at a maritime czar is something that all of us in the industry would certainly appreciate. An executive order from the White House mandating compliance with the law of the land that is currently on the books would also help. Let me just say that in the legislative history of 901 B-2, MARAD is given the authority to regulate the other agencies. It is in black and white; it precisely addresses the issues that we are here today to talk about, who has the most control over the risks, for risks should be handled by the party having control over that risk.

When a vessel has to be discharged in a foreign country, the port authority has the control over the local port much more so than the American shipowner does. I urge this committee to support the Maritime Administration's authority to regulate the other agencies in accordance with what the law of the land is today. Mr. Chairman, I appreciate the opportunity to discuss the Russian food aid program with all of you, and I will be pleased to answer any of your questions. Thank you very much.

[The statement of Mr. Shapiro may be found at end of hearings.]

Mr. LIPINSKI. Thank you, Mr. Shapiro.

Mr. Vlandis.

STATEMENT OF GEORGE W. VLANDIS

Mr. VLANDIS. Good afternoon, Mr. Chairman. My name is George Vlandis, I am a senior vice president, Chartering, OMI Corp. OMI is the second largest independent bulk operator in the United

States. It is a pleasure to have been invited to testify this morning. My full statement has been submitted.

Mr. LIPINSKI. Thank you. Without objection, that will be accepted into the record.

Mr. VLANDIS. OMI has participated in the cargo preference program for many years. We are currently heavily involved in shipments of food aid to the former Soviet Union. Seven of our U.S. flag vessels have completed or are currently in the midst of voyages to former Soviet Republics.

OMI has developed considerable expertise in providing service to the cargo preference market. The cargo preference market is often a difficult one because shipments are being sent to recipient countries that often do not have sophisticated port facilities. OMI had been carrying cargoes to Russian ports on both foreign and American vessels since the mid-1970's, and we were therefore familiar with these ports. But nothing in our experience had been quite as challenging as the recent shipments to the former Soviet Union.

Many of the problems faced by vessel owners in transporting grain to the former Soviet Union result from the terms incorporated in CBS charter parties that are contrary to standard commercial practices. The more variation that is permitted from standard commercial practices, the more uncertainty the vessel owner must face. The more uncertainty the vessel owner must face, the more rates will increase to reflect these uncertainties.

OMI recently completed discharge of a shipment of wheat to St. Petersburg. The wheat was being shipped to the Russian republic. While the vessel was able to berth relatively quickly, the lack of sufficient railcars to take the grain significantly slowed discharge of the vessel.

At the time of bidding on the tenders, OMI had been given a discharge rate of 3,000 tons per day, which would result in an expected discharge of 12 days. Instead, discharge took 23 days, because of the lack of adequate storage at the port and the reliance on delayed railcars to take the grain to its destination.

OMI's other six voyages were to Odessa, with grain bound for Moldova and the Ukraine. While these shipments were not specifically for the Republic of Russia, the problems we encountered mandated caution in bidding on the transportation of cargoes to any port in the former Soviet Union.

Three OMI vessels discharging cargo in Odessa for Moldavia were in port in Odessa, from 17 to 25 days. Most of the delays were a result of delays in railcars. Ownership of the railcars and payment for railcar services are still a subject of debate among the republics. While they debate, vessel owners wait.

Of the three shipments to the Ukraine, port congestion created significant delays. One OMI vessel waited 14 days just to berth, and the other two waited ten days to berth. Other factors play a role here as well. On one voyage, we learned mid-ocean that the stevedoring rates that were quoted to us when we submitted our bid for the shipment, had suddenly increased by 33 percent, and various other additional labor charges would now be applicable to discharge. OMI does not have the ability to say that we will not pay these additional costs. The vessel owner is a captive market for various interests in these ports.

Despite the significant difficulties, some anticipated and some not anticipated, OMI, aware of the competitive situation for this cargo, has had to, and indeed has, bid competitively and responsibly on shipments into Russia and CIS countries.

On our first two voyages to Moldova via Odessa, OMI's bid for the ocean portion of the transportation was below \$60 per ton and on our third, it was only slightly higher due to a lower volume of tonnage on the movement. Our inland rates were substantially lower than the foreign flag competition. And the comparable differentials on those movements were under \$25 a ton. And if I might mention, the same differentials were in effect for our bids for this transportation last year as they are this year, approximately \$25 per ton.

On three movements of corn to the Ukraine through Odessa, our bids were less than \$56 per ton free out. On every one of these voyages, we encountered significant delays in loading time. The first three being full berth terms, the second three being free out, but without demurrage.

Another vessel we had to Russia recently completed a voyage to St. Petersburg. The vessel was on full berth terms and, as I mentioned earlier, took 23 days to complete discharging. OMI's bid for the transportation was less than \$65 a ton. None of these voyages has been excessively profitable. In fact, none of these voyages has paid the full allocated costs of the vessel. We just do not believe that general allocations of rate gouging are justified. Nor do we believe that recent rate experiences justify calls to eliminate cargo preference.

I cannot emphasize the fact that we specifically have not gouged our rates. And if you look back at our history over the last two years, you will find that our freight differentials have always been approximately \$25 above the foreign market. The rates we have been awarded for our tankers have not adversely affected the programs. These rates have been highly competitive with bulk carriers. The tankers also make the market for U.S. flags much more competitive.

Although I do not wish to make this a principal focus of my testimony, I would like to talk for a moment about the utilization of tankers to carry preference cargo.

OMI has had seven tanker movements to the former CIS countries. Each of these has been a handy size tanker able to berth without lightening. It has been our experience that these vessels have been able to load and unload without problems due to their configuration. The only problems encountered have been due to lack of railcars available to unload the vessels or to the delays getting to the berth.

Virtually all the cargo has arrived without claim for damage and our sampling indicates that any damage to the cargo, including corn, has been within acceptable limits. In fact, our technical analysis indicates that tankers are, under some circumstances, actually less damaging to commodities than certain bulkers.

Despite the fact that OMI has successfully carried grain, including feed corn, to many countries, including the Soviet Union, in our tankers for many years, USDA has ruled that it will not accept

tenders for transportation of the 1992 corn crop to Russia in tankers.

We believe this position is unjustified. A fair-minded, factual analysis shows that it is technically possible. The real reason for the USDA decision is to enable Russia to lower the percentage of cargo subject to preference from a statutory 75 percent down to less than 20 percent. Over 60 percent of the tonnage to Russia in the current program will be corn. Tankers must be the predominant mode of transportation, as most of the fleet is already occupied.

We are asking that the committee help us in securing real compliance with the cargo preference laws through USDA reconsideration of its decision to ban tankers from the carriage of corn.

The cargo preference market is a vital source of business to the U.S. merchant marine. OMI and other vessel owners are more than willing to work with the Federal Government to keep the cost of the program at the most defensible level. As a result of the debate on the cost of shipments of grain to the former Soviet Union, we hope that there has been an increase in understanding of the factors that affect our rates. We all want the program to succeed. It is vital not only to our industry, but to the U.S. agricultural industry and to our Nation's foreign policy objectives.

Bulk owners look forward to continuing to work with the Maritime Administration and the USDA to increase whatever efficiencies in the program are possible.

I appreciate the opportunity to testify this afternoon and I will be happy to answer any question you may have.

[The statement of Mr. Vlandis may be found at end of hearings.]

Mr. LIPINSKI. Thank you.

Mr. PICKETT.

Mr. PICKETT. Thank you, Mr. Chairman.

Do you gentlemen find that other carriers have the same kinds of problems in the Russian ports that you are having in not being able to unload your cargoes?

Mr. VLANDIS. I think there is no question about that. Similar problems—we have recently heard that there have been predictions of anywhere from 30 to 60 days' delay in some of the Black Sea ports, anticipated delays.

Mr. SHAPIRO. Mr. Pickett, if I could just add, I agree with Mr. Vlandis. I would also say that there is another company that we both learned about earlier this week that has a ship destined for a Russian discharge, but through the Port of Tallinn.

They were informed—I believe they are ten days out of the port. They were informed by the Estonian port authorities in Tallinn that the Russians had made no arrangements to discharge the ship and that the ship would not be welcomed into Tallinn and that they should look elsewhere to see where they could discharge the cargo. So.

I think that Mr. Vlandis' statement that we can assure you that other operators are experiencing similar problems is in fact correct, and oftentimes, worse problems than what we have experienced.

Mr. PICKETT. Is it your perception that the problem is not a statutory problem, that the problem that you are confronted with is in the administration of existing law, or do you think that something

needs to be done statutorily to further clarify the policy position of the United States as far as preference cargo is concerned?

Mr. VLANDIS. Well, one of the biggest problems has been the delay in discharging. That is a physical problem. The availability of railcars is probably the predominant problem in that regard. And that is something we have no control over. I give you a for instance.

We have had six tankers in Odessa. There has been a constant complaint that the tankers are slow discharging. We cannot discharge a cargo any faster than the port can receive it. On one day, we happened to have experience of several railcars being available and we discharged approximately 5,000 tons. So that proves the fact that a tanker can discharge quickly, provided the port can receive the cargo.

Mr. PICKETT. Mr. Shapiro, you wanted to add anything?

Mr. SHAPIRO. Mr. Pickett, obviously I also agree with Mr. Vlandis again. However, I do think that some of the problems are—can be fixed over here. I am not sure if you need a new statute because, as I understand the existing law, the Maritime Administration is already vested with the authority to regulate these shipper agencies, and hence to control what the transportation charter party terms are.

Unfortunately, I don't know of the U.S. Congress ever adopting a law which says we meant what we said back in 1970, that the jurisdiction exists. So I do note, and we all in the industry note, that USDA and MARAD are cooperating together.

I must say that I do not believe the bulk industry is absolutely delighted with what the Russian discharge terms that have been negotiated are. But we would hope that that process would continue and, hopefully, somewhere along the line, we will be able to get more commercial-like terms in our charter parties and thus minimize the risks that we face.

Mr. PICKETT. OK. Thank you.

Thank you, Mr. Chairman.

Mr. LIPINSKI. Thank you, Mr. Pickett. Any one of you gentlemen can answer these questions. Do you agree with the previous individual from the USDA who testified that U.S. flag rates are \$37 higher than the average foreign flag rate?

Mr. VLANDIS. Absolutely not. There may be individual instances where you've seen that, but from my statement, you will note that I testified that our average freight differential between foreign and American was approximately \$25.

Mr. LIPINSKI. \$25, not \$37?

Mr. VLANDIS. That is correct.

Mr. LIPINSKI. Didn't you also testify that there was some rate that you got a \$41 rate there?

Mr. SHAPIRO. Yes, that was me, Mr. Chairman. We have even had a \$30 rate to Estonia last year. I would—I hope I am not presumptuous. I would probably tend, because of our equipment, to say that we probably have the lowest rates that have been recorded on the Russian grain program and I think the differential is far less than even \$25.

But the risks which we experience between having carried a cargo last year to Tallinn for \$30 a ton, and carrying the identical

cargo to Tallinn today, are night and day. There are a whole host of risks which we face now. For instance, the Liberty Star, carrying a similar cargo almost one year later is getting \$40 a ton.

However, the foreign rate, which was \$15 a ton last year, is now in the mid-30's. So we are only a \$6 differential over some shipments. Again, it depends on charter party terms and it depends on the time of the year, the port conditions, and the railcars.

I would also add, with regard to the railcars, we discharged the Liberty Star after 28 days into 2.5 ton railcars. To discharge an almost 60,000 ton shipment, we are talking about a substantial amount of railcars. I mean, upwards of 22,000 railcars to get this ship discharged.

Mr. LIPINSKI. Is this because they only have those type of railroad cars? Is it because that is the type of railroad cars they give to American ships?

Mr. SHAPIRO. No, I think it is safe to say that in most of the former Communist countries, because we have all experienced this in Bulgaria and Romania, Poland as well, there are limited numbers of railcars because they are dispersed throughout the entire country.

Prior to the Soviet Union breaking up into republics, the Romanians were providing the Soviets with railcars to help gather their own internal crop. I think it is a matter of timing and I think rather than jamming all this cargo in there, as Mr. Goldthwait testified they expect to do between June 1st and September 1st, they ought to look at a reasonable program which spreads this out so their port facilities will more easily handle the influx of all these cargoes.

Mr. LIPINSKI. Well, why would the USDA—or did he answer that question that I am about to ask, that question to you? I was going to ask you, why would they want to, you know, jam all this in in a short period of time? But someone on that panel did mention that because the President promised them?

Mr. VLANDIS. That is right, the President made the commitment that the cargo would be transported as soon as possible.

Mr. LIPINSKI. Was it that Russia asked for it by June the 1st? Is there any request on the part of Yeltsin or the Russian Government that it arrive by the 1st of June?

Mr. VLANDIS. I suspect this goes back to the railway problem, the railcars, and that the Russians probably wanted these railcars there before their harvest came in, which would tie up the railcars.

Mr. SHAPIRO. And that would be in the fall, in the very early fall, end of summer, early fall.

Mr. LIPINSKI. Well, we are still manufacturing railroad boxcars in this country, maybe we ought to send some salesmen over there to Central and Eastern Europe.

Mr. SHAPIRO. Maybe we could get the U.S. Department of Agriculture to provide commercial credit loans to them so they could buy them from us. I would like to challenge some of USDA's statements here today. As far as I know—

Mr. LIPINSKI. The floor is yours.

Mr. SHARP. The former Soviet Union is over 900 million in default in interest payments alone, to the best of my knowledge. I mean, we have kind of lost who owed—in Mr. Taylor's and Mr.

Pickett's questions, I guess, we kind of lost who owes what and what it is they owe and have paid.

Of an almost \$5 billion commercial credit program, of which not one ton moved on one American flag ship, not an American job involved with that, et cetera. I believe that the Soviets went into default somewhere between the \$2.5 billion and the \$4 billion range.

Obviously, I don't work at the Department of Agriculture, but I am sure you can get this information, sir, with your authority and jurisdiction. As far as we know, the Soviets are 900 million in default on interest payments. They haven't even begun paying back principal.

So it is amazing to me that we have a system here that allows us to find nations creditworthy, as I told you two weeks ago when I was before you, when every other nation in the world found them not to be commercially capable or financially strong enough to repay their debt.

Mr. LIPINSKI. Are you finished for a moment? Do you think that perhaps we feel that it is necessary for political considerations to look the other way when it comes to dealing with the former Soviet Union, Russia and its various republics now? Anybody care to comment on that?

Mr. SHAPIRO. I am not sure, if we can look the other way?

Mr. LIPINSKI. Well, what I mean is that, since they were our adversary for such a long period of time, and since there are still people who are concerned about them possibly being revised to a totalitarian state, that perhaps we make arrangements with them that force us into situations to look the other way at abuses that might possibly occur because we do not want to alienate them overall and perhaps motivate the forces of reaction in those nations to try to assume control again.

Mr. SHAPIRO. Mr. Chairman, if what you are saying is that because we want to foster and create a healthy relationship with the former Soviet States and help them emerge from the lifting of the Iron Curtain that surrounded them, obviously everyone in our industry wants to do everything we can to do what is in the best interests of the United States. And that clearly, in my personal opinion, is in our national interest.

I might say that the law prohibits the giving of commercial guarantees for what are clearly foreign aid purposes and reasons. And it seems to me that in looking at the history of the American agricultural relationship with the Soviet Union, we have had the Department of Agriculture authorize GSM-10Z moneys, which I believe the commercial credit guarantees which are in default were that type of loan, which are prohibited by law from being given for foreign policy considerations. Exactly, sir, what you are talking about, that we should look at this as a concessional foreign aid program.

We should be carrying everything going to the Soviet Union, which we have been prevented from carrying for the last two and a half years, until the—I guess the last year, when they finally switched over to some of the donational and concessional programs when they went into default.

Mr. LIPINSKI. Well, I am on your side. I think that what I had made mention of is really a very strong factor in regards to this

whole situation. That is why, once again, I would like to see—and right now, the way it is set up with all these various departments involved with no one having clear-cut authority for making decisions, that is why I would like to see some kind of czar established so we and you and everybody else who is interested could make sure that that individual was talked to and we were successful in getting this program implemented all the time.

I think with the way things are diffuse right now, it is very difficult for us to get through some of the oratory, some of the subterfuge that exists. I mean, some of the things they are doing may be very well and good for the benefit of the United States and for the entire world. But it is not beneficial to people in this industry. And I think we have to continue to pursue them to do what is beneficial to people in this industry. I don't want to get on a soapbox.

There is also made—the gentleman from the USDA made mention that there was more damage to corn occurring on tankers. Anybody care to address that?

Mr. VLANDIS. To the best of our knowledge, there have been no official claims of corn having been damaged beyond the permissible tolerances. And I think that that has got to be the ultimate factor here. If that is the case, and we insist that it is because we are unaware of any official claims being presented, then why are we making such a fuss for not allowing tankers to carry corn?

We were among the first——

Mr. LIPINSKI. Why do you think the tanker is not allowed to carry the corn?

Mr. VLANDIS. If it is not a damage situation, what is it?

Mr. LIPINSKI. No, I am asking you, what do you think it is?

Mr. VLANDIS. I feel quite confident it is a budgetary problem. Who is paying for the transportation?

Mr. LIPINSKI. Any other opinions there on the panel?

Mr. SHAPIRO. Well, I would echo Mr. Vlandis' statement, only to say that our modern bulk fleet, of which Mr. Vlandis' company has some ships as well as our ships, do not have the ability to move the entire Russian corn program. It would take the addition of American flag tankers, which are available.

And there seems to be a concerted effort by some parties to avoid using those tankers for the carriage of corn, which we would both together, I think on behalf of our industry, disagree with.

Mr. LIPINSKI. Thank you. What problems—when problems arise in the transportation of food aid cargoes, what department or agency do you seek assistance from? Have government agencies been generally responsive in providing assistance?

Mr. VLANDIS. We would normally primarily go to MARAD. And I must admit that they have been very cooperative.

Mr. SHAPIRO. I would second those statements again. We certainly turn to MARAD. Unfortunately, MARAD often has their hands tied. They get on the phone with USDA and AID and they are told this is a commercial matter between the Republic of Belarus, for example, with the example of the Liberty Star, and the company, and there is nothing we can do.

The problem is that the USDA again is negotiating the charter party terms, and allowing for the form of the charter party which

has the Republic of Belarus as the charterer of a certain ship, the Liberty Star in this case.

I ask you, Mr. Chairman, could you imagine trying to collect liquidated damages from the Republic of Belarus? I mean, there is no—

Mr. LIPINSKI. It would be extremely difficult, I would think.

Mr. SHAPIRO. But yet our government sanctions a charter party which allows us to be put in that situation. I just, for the life of me, cannot understand that.

Mr. LIPINSKI. Most people don't even know what Belarus is.

Mr. SHAPIRO. Very true.

Mr. LIPINSKI. Mr. Pickett, do you have any questions? You haven't, OK. Then I can continue on here.

When a U.S. flag operator carrying food aid encounters problems in a foreign port, is a representative from the U.S. Government ever available to provide assistance in dealing with the foreign authorities?

Mr. SHAPIRO. Never in that foreign port. Whatever assistance we can get, we receive from the Maritime Administration, guiding us to various other people or agencies where we can at least present our case.

Again, all too often, the format is that we are told by the people at USDA and AID that this is a commercial matter between you and the charterer. In short, Mr. Chairman, the answer is no, there is no American representative in a foreign port to assist us.

Mr. LIPINSKI. Certainly would be helpful if there was.

Mr. SHAPIRO. I agree with that, sir.

Mr. LIPINSKI. If we weren't in this time of reducing our budget deficit, maybe we could hire some new people and they could go over there to represent you and the U.S. Government with the power of the U.S. Government behind them.

Mr. SHAPIRO. Mr. Chairman, I have a quick, funny story on that. We were delivering a food aid cargo to Sri Lanka last year, and I was called by our port captain and I could hear the bombs going off in the background, that there was a civil war, a civil insurrection going on, that the president had put everyone in the parliament under house arrest and declared that he was dissolving the parliament.

I called AID and told them we had a major problem in Sri Lanka, how were we going to get the ship discharged, and there was a war going on. I was informed by people in the government, we shall say, that they don't know where I got my information from, but they spoke to the AID desk in Colombo, Sri Lanka and everything's fine there.

Mr. LIPINSKI. I am not going to comment upon that one. To your knowledge, have Russian authorities ever suggested that payment of special fees, or it says something else here in my question but I am not going to say that, or gratuities, would expedite the handling of U.S. flag vessels in their ports?

Mr. VLANDIS. I don't think there are gratuities as such. We find some of the gouging rates to serve the same purpose.

Mr. LIPINSKI. So your answer really is, yes, it is just you choose different words?

Mr. VLANDIS. That is not exactly what I said, but you are entitled to your interpretation.

Mr. SHAPIRO. Mr. Chairman, one of the problems we have, again back to the charter parties, there are artificial LOA restrictions, that is the length overall on the vessel, which a vessel could—let's just take an example. There a number of U.S. flag vessels that have been required to lighten, that is, discharge their cargo into smaller daughter vessels which will deliver that cargo into the port.

Under normal times, those vessels have been given access directly to the berth. They have been able to sail straight into the berth and discharge into the facility. All of a sudden in the charter party, there is what we would call a artificial LOA, it is not a real LOA restriction, and that vessel is forced to lighten its cargo.

The lightening rates for vessels in both the Tallinn area and in the Novaya Odessa area, have gone from \$2,000 a day for lightening vessels, the charter high rates, to \$18,000 a day, in about a 45-day period. So that the owner of those smaller daughter vessels is now receiving much higher amounts for his daughter ships than he was under the prior regime, if you will.

Mr. LIPINSKI. It is a free market, right?

Mr. SHAPIRO. Welcome to the American way.

Mr. LIPINSKI. I have some other questions which I will ask you to answer in writing.

[The material received may be found at end of hearing.]

Mr. LIPINSKI. I have no further questions for you at this time. And Mr. Pickett doesn't either, so we are going to excuse you.

Is there anything you would like to say in conclusion before you leave us on this occasion?

Mr. SHAPIRO. I think just that we are delighted to appear before you and look forward to working with you and cooperating with you to further an efficient food aid program.

Mr. LIPINSKI. Thank you very much. I appreciate all the information that you have given us. Have a good day.

Mr. SHAPIRO. Mr. Chairman, can I say one thing, please?

Mr. LIPINSKI. You certainly may.

Mr. SHAPIRO. Not that I have hesitated to say anything so far, but I attended a joint hearing of the Agriculture and Commerce, State, Justice, Judiciary Subcommittees a few weeks ago, where we talked about some of the problems on the Russian program. At that hearing, representatives of the U.S. Government, and specifically the Department of Agriculture, stated that, to their information, there were no delays in Russian ports.

Nevertheless, three weeks later today, you are hearing verification of every claim that the maritime interests made when they appeared there. And I think that a lesson is to be learned from this. Sometimes we have better information than they do, and if they negotiate agreements, they ought to consult with us and maybe take some of us along for those negotiations, since unfortunately we have nonexperts sometimes negotiating transportation terms where there are transportation experts both in the government at the Maritime Administration and in the industry which might be able to help save our government some money in having a more efficient food aid delivery system.

Mr. LIPINSKI. I think that is a splendid idea. It is something that was kicking around in my own mind. You people, I believe, should be brought in more to the process. I think it would certainly be helpful to you. I think it would be helpful to this country and to the programs we are supporting here.

Mr. SHAPIRO. Thank you, sir.

Mr. LIPINSKI. You are welcome.

Mr. LIPINSKI. Our next panel member will be from the Grain Shippers, Steven A. McCoy, President, North American Export Grain Association.

Good afternoon, Mr. McCoy, and welcome.

STATEMENT OF STEVEN A. MCCOY, PRESIDENT, NORTH AMERICAN EXPORT GRAIN ASSOCIATION

Mr. McCoy. Thank you, Mr. Chairman. Appreciate the opportunity. I left my lawyer at home. I just want to——

Mr. LIPINSKI. I have mine here.

Mr. McCoy. I see you come well-prepared.

Mr. Chairman, there has been a lot of information, I would argue misinformation, passed today. I don't know really where to begin. Perhaps if I could ask at least for some sort of promise that maybe in the question and answer period we could get back to some of the comments that were made with respect to the Russian program, the Export Enhancement program, the reasons for FUC indebtedness, the issues that relate to the exemption of the GSM-102 program from cargo preference, I think all of these are matters which the previous panel commented on.

Mr. Shapiro gave you a plea at the end to get more experts involved. I can assure you, he is no expert about these agricultural programs, and particularly as it relates to the Soviet Union. So I think we should, as the wise man said, beware of the self-proclaimed experts.

But I really do appreciate the opportunity to testify here. I know that we are on opposite ends of the spectrum of the table on cargo preference and I really do appreciate your graciousness in inviting me to come and express my views, even though many of those are not going to be particularly palatable to the groups and interests who makeup your core constituency.

So with that, I simply ask unanimous consent that my statement be included in the record in its entirety and I will summarize from my statement.

Mr. LIPINSKI. Without objection, so ordered.

Mr. McCoy. Like you, we are only now digesting the impact of the recent U.S. Russian food aid agreement. We know that—that USDA has set aside roughly \$100 million of the \$700 million in food for progress funds pledged by President Clinton to President Yeltsin in Vancouver, or 20 percent of the commodity value of the NWP, to pay U.S. ship owners the difference between world shipping rates which the Russians will bear and sharply higher than market U.S. flag rates which, on average, we estimate will exceed world rates by two to three times.

We also know that responding to allegations of excessive costs and delays in Russian ports, USDA has sought and achieved for

U.S. flag operators an assurance of nondiscrimination against U.S. flag vessels, this despite the evidence—and I want to get back to this because there is evidence—that delays in these ports are significantly less burdensome than that claimed by U.S. flag operators, who in my opinion have made such claims in large part to justify steeply higher U.S. rates.

We are also pleased by the decision of USDA to exclude the use of U.S. tankers from the carriage of 1992 crop corn. These vessels are unsuitable for that purpose given the nature of that crop. And I have a lot of testimony that I would like to offer you coming from the experts, including the scientists who work on this issue. And the waiver of their use will assure better quality exports to Russia.

Given the context of conflicting agendas between the various agencies and the various groups that you have seen here today, I believe USDA has done a skillful job in accommodating larger U.S. and Russian interests with the more isolated interests of the U.S. flag operators.

But the immediate problems thereby solved in the instance of Russia do not begin to approach a solution to the wider question of cargo preference, nor has the experience, our experience and the experience of many of the agencies in this instance, encouraged wider support for U.S. flag objectives in the food aid program.

At the heart of the matter is a fundamental difference of opinion and philosophy regarding the wisdom and effectiveness of cargo preference law. Supporters of cargo preference law believe that U.S. flag shipping interests supersede all other considerations in the allocation of scarce resources to food aid. Opponents of cargo preference do not.

American agriculture desires no less than the U.S. maritime community, the survival of an efficient U.S. commercial fleet. However, we question the cargo preference has served that objective. Furthermore, we believe that assistance could be provided to the U.S. merchant marine in ways such as by direct subsidies, better suited to the achievement of that objective and at less political cost to the U.S. maritime community.

No U.S. commercial bulk agricultural cargoes today travel on U.S. bottom vessels, nor will that situation change so long as U.S. rates vastly exceed world rates. Cargo preference provides a direct disincentive for U.S. bulk carriers to be competitive.

Denied commercial market, U.S. bulk carriers become a captive of their relationship with the U.S. Government. That is not healthy and it does not serve the welfare of the U.S. bulk fleet. It is nevertheless the course of action that has been dictated by the U.S. flag lobby.

What then of longer term solutions? How can the interests of the U.S. merchant marine be reconciled with the wider interests involved in the program of U.S. food assistance. Every economic interest has the right, of course, to promote its own agenda. The U.S. maritime community has advanced its agenda in part through the medium of food aid. So be it.

But let the subsidies thereby paid to the merchant marine be openly and honestly accounted for. Let us end the practice whereby assistance to the U.S. merchant marine is clothed as foreign assistance to Russia or any other country.

I propose that the current system of cargo preference entitlements be converted to a system of direct subsidies to U.S. flag operators. Eliminate cargo preference. Let the funds now appropriated to the USDA or the Department of Defense or other agencies in compliance with cargo preference be appropriated to MARAD or some other suitable agency so that the support of the merchant marine is direct and accountable and not, as present, spread throughout all of the agencies of the Federal Government.

We are aware of the conventional political arguments that oppose such a change. Nevertheless, we believe strongly that such a subsidy program would be widely supported, including as past political experience as our guide, by the Congress itself.

Such a subsidy tool in the hands of MARAD would provide greater flexibility to the program of support of U.S. maritime. It could be used for government-impelled cargos only or to buy down the cost of U.S. commercial participation in commercial trades, thereby assuring the continuous U.S. flag presence in the international market.

We believe, also, Mr. Chairman, that failing such reform, other changes could be proposed in the current cargo preference system, in particular, to prevent abuse. MARAD should be instructed to interpret fair and reasonable and available with respect to international and not solely U.S. flag market conditions. Some cap must be placed on rates above which the U.S. Government will not pay.

Vessels declared available for the purpose of receiving cargo preference support must be suitable for the carriage of commodities or goods so encumbered. Here again, reason must prevail. U.S. agriculture harbors. No ill will toward the U.S. merchant marine.

Agricultural groups do not oppose cargo preference out of spite, nor do they seek to exclude U.S. participation in food aid trades. They seek only reasonableness and fairness in the implementation of cargo preference policy. They seek the means to maximize food aid to needy countries, a role U.S. agriculture is proud to serve.

Again, Mr. Chairman, I want to thank you for the opportunity to testify. I also want to commend you for your idea regarding the creation of a czar. I am happy to offer myself as a nominee for that position. I am sure it would have wide support in this room. But again, these are matters upon which we honestly disagree.

I am happy to be here to get past the diatribe, to get involved in the dialog. I think it is important that we understand all the various interests involved in these programs, that we work well to make these programs operate efficiently.

I can assure you that we have no agenda which is aimed at or aims at in any way diminishing U.S. Government support for this industry. I am not familiar with the industry, but I am familiar with the Congress and I am familiar with the high esteem in which you hold the industry. Let us find a way to provide assistance to this industry, this great industry, the U.S. maritime industry, that is not an action on other industries such as the agricultural industry or other agencies of government.

So with that, I thank you for the opportunity to testify today.

[The statement of Mr. McCoy may be found at end of hearings.]

Mr. LIPINSKI. Well, we want to give you another opportunity to come back and testify. And at that time, we want to ask you ques-

tions. I think the position you take is in opposition to the overwhelming majority of the testimony we have taken, as long as I have been on this committee, and I have been on this committee for quite a long period of time. I really think your testimony should be given the widest possible audience.

So what I want to do is not ask you any questions today, and I discussed it with Mr. Pickett also. He is not going to ask you any questions today. We have no Republicans here as you can see. And many of the members of our committee were here, but they had to go on to other things.

I want to schedule you back here sometime in the next two weeks if your schedule permits. If not the next two weeks, the next three weeks, whenever this committee and you can get together so that we can have you as the lead-off witness, perhaps the only witness at the hearing, and we can have the Republicans here, and we can have a full complement of Democrats here. Because I really think it is very important for us to go through your testimony in detail.

Mr. McCoy. Well, I appreciate that, Mr. Chairman, so long as I don't have to write yet another piece of testimony. If I can rely on the same——

Mr. LIPINSKI. No, in fact we certainly would like you to hand in that testimony right now so we can go over it between now and the next hearing. But no, in fact, we would be prepared really just to start off with asking you questions.

Mr. McCoy. I look forward to that opportunity. Thank you very much.

Mr. LIPINSKI. Thank you very much.

And that concludes our hearing for today. We will look forward to seeing all of you the next time we are in this room.

Thank you.

[Whereupon, at 4:33 p.m., the Subcommittee was adjourned; and the material submitted for the record may be found at end of hearings.]

CARGO PREFERENCE

WEDNESDAY, JUNE 23, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in room 1334, Rayburn House Office Building, Hon. William O. Lipinski (Chairman of the Subcommittee) presiding.

Present: Representatives Lipinski, Pickett, Taylor, Schenk, Hastings, Stupak, Ackerman, Bateman, Kingston, and Bentley.

Staff Present: Keith Lesnick, Staff Director; Sharon K. Brooks, Counsel; David Honness, Professional Staff; Randy Morris, Subcommittee Clerk; Hugh N. Johnston, Minority Counsel; John Cullather, Professional Staff; Carl W. Bentzel, Counsel; Sue Waldron, Press Assistant; Gregory Lambert, Counsel; Margherita Woods, Staff Assistant; and John Rayfield, Professional Staff.

STATEMENT OF THE HON. WILLIAM O. LIPINSKI, A U.S. REPRESENTATIVE FROM ILLINOIS, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

Mr. LIPINSKI. Good morning, everyone. I appreciate everyone being here this morning. We are under very difficult time constraints this morning because we have to conclude this hearing by 11 o'clock because we have another very important meeting coming in here at 11 o'clock. We may run into a journal vote in a few moments. I hope not, but we may.

Because of the time constraints, I am going to submit my statement for the record and since there is no one else here at the present time, no one is going to object to that, and it will be perfectly acceptable to me and we will follow the same pattern with everyone else when they arrive.

We will simply have them put their opening statements into the record and move on from there.

[The statements mentioned follow:]

STATEMENT OF HON. WILLIAM O. LIPINSKI, A U.S. REPRESENTATIVE FROM ILLINOIS, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

Today, the Subcommittee continues its oversight into cargo preference issues and enforcement of related laws and regulations. This hearing is essentially an extension of our June 8 hearing to provide an opportunity to hear testimony from the Department of State on cargo preference issues. We also will hear testimony from the president of the North American Export Grain Association who, at my request, was kind enough to reappear before the Subcommittee to offer his organization's views on cargo preference.

The various cargo preference laws that now exist are an important element of support to our maritime industry, providing a dependable pool of cargoes for the employment of U.S. vessels crewed by U.S. citizens. Cargo preference as it relates to foreign aid is of special concern to the Members of this Subcommittee. Foreign assistance programs funded by U.S. taxpayers should have widespread economic benefit to workers in this country. Goods and services resulting from these programs should be of U.S. origin and transported on U.S.-flag vessels. This principle should apply not only to credit and commodity programs but cash aid programs as well. If other countries tie foreign aid grants to the use of their own vessels, shouldn't the United States do the same. The Members of this Subcommittee are interested in hearing the State Department's views on these issues. Of particular interest to us is the State Department's compromise agreement with the Government of Kuwait to use U.S.-flag vessels in the transportation of goods necessary for that country's reconstruction program. We also expect to hear testimony on the \$10 billion loan guarantee negotiated with the Government of Israel and the degree to which the State Department considers cargo preference when it negotiates foreign aid agreements.

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, this Subcommittee hearing is a continuation of the earlier effort on June 8, 1993, concerning implementation and enforcement of our cargo preference laws. I want to compliment you, Mr. Chairman, on your tireless perseverance in dealing with officials at the Department of State.

It is unfortunate that we had to schedule this separate hearing but I am pleased that we have finally been able to convince the State Department to respond to our requests to appear before the Subcommittee.

It has been frustrating to those of us who have attempted to solve some of these cargo preference problems to have been repeatedly "stonewalled" by officials at the State Department.

Nevertheless, I am delighted that we finally have an opportunity to discuss the application of cargo preference to some of our foreign aid programs. We may, in fact, be able to resolve some of our concerns about how the foreign assistance programs have been implemented now that we have the appropriate people here to testify.

Thank you again, Mr. Chairman, for pursuing this matter. I hope that we can lay to rest a number of issues that have been outstanding. I look forward to a productive hearing this morning.

STATEMENT OF HON. ALCEE L. HASTINGS, A U.S. REPRESENTATIVE FROM FLORIDA

Mr. Chairman, I thank you for the opportunity to discuss cargo preference issues. The purpose of cargo preference legislation is to protect the U.S.-flag fleet. As a Member of the House Foreign Affairs Committee and the recent Freshman Class Whip on the Foreign Aid Bill, I am wholly in support of the U.S. Foreign Aid Program. But I insist that we maintain the U.S.-flag fleet, and in these trying economic times when foreign governments so heavily subsidize their shippers, the only way that we can protect our fleet is to enforce cargo preference regulations.

If we continue to provide relief to other countries, we must do so in accordance with cargo preference requirements. Every U.S. Governmental agency must enforce the shipping rights granted by cargo preference laws. If we fail to receive full agency cooperation and use American vessels, we are failing our maritime industry. If we close our eyes to the enforcement of cargo preference we endorse the use of foreign-flag ships in the carriage of our goods. This is not acceptable.

I have heard the arguments of those opposing cargo preference on aid shipped to foreign countries, i.e., the cost of American shippers is so high that too much of the aid goes to cover shipping costs. I realize this, and I understand that if they spent less by shipping on cheaper foreign carriers they would have more aid left for their internal needs. While there is some validity to this argument, our overriding concern must be the American maritime industry! The U.S. merchant marine has suffered a distressing decline over the past decade. We cannot be the ones to put the nail in their coffin!

I thank you, Mr. Chairman, for your time.

Mr. LIPINSKI. I would like to introduce our panelists here this morning. We have Mr. James Tarrant, the Deputy Assistant Secretary for Transportation of the Department of State, and he is accompanied by Thomas Miller, the director, Israel Office, Department of State, Mr. Harry Klein from the Department of State. I don't know what your specialty is, Mr. Klein. You want to give us that for the record?

Mr. KLEIN. Right. I am the Director of Humanitarian Affairs in the Office of the Coordinator for Assistance to the Newly Independent States of the Former Soviet Union.

Mr. LIPINSKI. Speak a little louder because I really didn't understand a word you said.

Mr. KLEIN. I am the Director of Humanitarian Assistance in the Office of the Coordinator for Assistance to the Newly Independent States of the Former Soviet Union.

Mr. LIPINSKI. Thank you very much. And we also have Mr. Steve McCoy, the President, North American Export Grain Association. We have everyone at the table. We will start out with the State Department's testimony and then we will go to Mr. McCoy and then we will get into questions.

STATEMENT OF JAMES TARRANT, DEPUTY ASSISTANT SECRETARY FOR TRANSPORTATION, DEPARTMENT OF STATE, ACCOMPANIED BY THOMAS MILLER, DIRECTOR, OFFICE OF ISRAEL AND ISRAELI/ARAB AFFAIRS, DEPARTMENT OF STATE, AND HARRY KLEIN, DIRECTOR OF HUMANITARIAN ASSISTANCE, OFFICE OF THE COORDINATOR FOR ASSISTANCE TO THE NEWLY INDEPENDENT STATES OF THE FORMER SOVIET UNION

Mr. LIPINSKI. The Chair recognizes Mr. James Tarrant, Deputy Assistant Secretary for Transportation, Department of State.

Mr. TARRANT. Good morning, Mr. Chairman, ladies and gentlemen. We are pleased to have this opportunity to meet with you today to discuss the cargo preference policy issues that are of concern to this committee.

I have a brief statement, should not take too—and we will be responsive to your time constraints. I would like to express our regret on behalf of the department about the misunderstanding concerning the department's participation in earlier hearings and you can be assured that we will be responsive to this committee in the future.

Briefly for the record, the Department of State itself ships only a small amount of cargo subject to the Cargo Preference Act. According to the most recent data that we have from the Maritime Administration, the department shipped only about 5,300—

Mr. LIPINSKI. Mr. Tarrant, would you suspend just for a moment? Could you pull the microphone closer? It seems—hopefully it is the noise from outside and not in this room, but I am having a difficult time hearing you.

Thank you.

Mr. TARRANT. Not at all. Let me just skip, Mr. Chairman, in view of the time, the actual cargo preference materials shipped by

the State Department and AID and skip to the heart of the—what I believe to be the committee's interest this morning.

In bilateral and multilateral negotiations with foreign governments, the department I believe has defended the U.S. cargo preference system on a number of occasions. We have been able to make, I think, our biggest contribution to the promotion of U.S. maritime interests by attacking foreign restrictions on U.S. ocean carriers.

Our reference in a number of countries around the world have developed important new markets for our industry. Let me be specific.

Kuwait. Our vigorous efforts to open the shipping market in Kuwait I believe illustrate the department's most recent support for this important industry. We pursued this issue repeatedly at the highest levels of the Kuwaiti government beginning as early as October, 1991. In February of this year, Secretary Christopher discussed it personally with Amir Jaber, Crown Prince and Prime Minister Saad, as well as Deputy Prime Minister and Foreign Minister Sabah.

On April 4, the government of Kuwait agreed to allow U.S. shipping companies to compete equally for Kuwaiti government project cargoes. This decision exempts our carriers from the 1986 regulation giving the United Arab Shipping Company the right of first refusal.

Mr. Chairman, you asked how the department plans to monitor the government of Kuwait's commitment. Let me begin by saying that the U.S. embassy in Kuwait has worked directly with U.S. shipping firms, as well as the government of Kuwait and public procurement agencies to insure that this April 4 decision is in the first instance well publicized in order to help insure that U.S. companies actually know about and can take advantage of the opportunities here.

In addition, the embassy provided U.S. shipping companies with an English translation of the decisions and has undertaken to work with them to continue their marketing efforts.

Next, the embassy is also arranging meetings directly with major Kuwaiti government procurement agencies, including the Kuwait Petroleum Company to advise them directly of the decision and of the strong interest of U.S. companies in carrying the project cargoes.

As you might expect, Mr. Chairman, the results in terms of actual business during the nine or ten weeks since the decision was made has been slight, but the embassy is committed to continuing its efforts on a long-term basis. And we fully anticipate that U.S. firms will, over time, benefit significantly from this change to competitive conditions in Kuwait.

I would also like the committee to know that U.S. Ambassador Gnehm places a high priority on this and will remain personally involved to insure that the implementation program is followed through.

Mr. Chairman, you also asked about the degree to which U.S. vessels will have a reasonable share of the cargoes generated by the loan guarantee program for Israel. In an exchange of letters between the Secretary of State and the Israeli ambassador in Decem-

ber of 1992, the government of Israel committed to having U.S. business share the benefits of economic growth promoted by these guaranteed loans. I understand that this commitment reflects discussions between the administration and the congressional leadership.

To carry out its commitment, Israel has outlined steps to provide information on business opportunities to U.S. firms. The State Department has participated in an Israeli embassy briefing for the U.S. maritime industry specifically.

We also raised shipping concerns at the bilateral consultations with the Israeli government on economic issues in Jerusalem some two weeks ago. The department will review progress in this area through a series of regular consultations. If at any time it becomes apparent that the Israeli efforts have not led to a significant increase in the purchase of U.S. goods and services, the department will consider further appropriate steps.

Finally, Mr. Chairman, you expressed interest in the department's commitment to cargo preference for humanitarian assistance programs. You asked whether the department routinely negotiates cargo preference provisions into agreements for humanitarian assistance.

Let me say that as do other executive branch agencies, we seek to and do, I believe, comply with the requirements of all cargo preference laws. In arrangements for the shipment of humanitarian cargoes, the Agency for International Development routinely applies cargo preference provisions in accordance with the Cargo Preference Act of 1954.

I understand, Mr. Chairman, that the Congress has a particular interest in the assistance programs for Russia and the newly independent states of the former Soviet Union. As I believe you know, Secretary of Agriculture Espy stated that in accordance with the cargo preference laws, the administration will take such steps as are necessary and practicable to assure that 75 percent of the commodities under the \$700 million Food for Progress program of assistance will be shipped on U.S. flag vessels.

The Maritime Administration and the Agriculture Department are working together to offer U.S. carriers a fair share, a fair share of cargoes at the most economical cost possible.

I believe, Mr. Chairman, that other agencies have recently testified in detail on this matter. As you are also aware, the Defense Department appropriations are being used to transport bulk wheat and other commodities not part of this package to the former Soviet Union. Funds made available under the Dire Emergency Supplemental Appropriations Act are authorized to be used for such purposes, "notwithstanding any other provision of law."

Consequently, the general counsel of the Department of Defense determined that the government is authorized to arrange for the ocean transportation of such cargo free of the requirements and other laws which would otherwise apply.

Consistent with the general counsel's determination, the DOD, the bidding for the shipment of these commodities has been opened to all carriers. This decision reflects a compelling need to fulfill without delay the commitments that the United States has made to provide much needed food assistance to the former Soviet Union.

In conclusion, Mr. Chairman, I believe that the record will show that the State Department continues to work diligently on behalf of American business and maritime interests overseas.

We would be happy to answer any questions you have.

Mr. LIPINSKI. Thank you very much, Mr. Tarrant, and your entire statement will be made part of the record unless there are objections from anyone. Hearing no objection, it is so ordered.

[The statement of James Tarrant may be found at end of hearing.]

STATEMENT OF STEVEN MCCOY, PRESIDENT, NORTH AMERICAN EXPORT GRAIN ASSOCIATION

Mr. LIPINSKI. And now we will hear from Mr. Steve McCoy. Mr. McCoy, the floor is yours.

Mr. McCoy. Mr. Chairman, again, thank you.

I think it is a rare distinction for a single witness to get an opportunity to testify twice about the same issue before a single committee. I do thank you for your consideration in this issue. I know that the views that I espouse on these matters are not necessarily popular with the committee or your constituency, and so I give you great credit for your graciousness in extending me the floor.

Mr. LIPINSKI. You are a very unique witness.

Mr. McCoy. Thank you. I would ask that my statement as introduced in the record at the previous hearing be considered my statement for the purposes of the hearing today.

Mr. LIPINSKI. And without objection, so ordered.

Mr. McCoy. I would also ask if instead of going through and summarizing once again what I said at the last hearing, you would allow me just to make some basic general points regarding the issue of cargo preference and also the issue of aid to Russia.

Mr. LIPINSKI. Go right ahead.

Mr. McCoy. Thank you. Mr. Chairman, I think you know our general views on the issue. You know we oppose cargo preference.

You know that as an alternative, we support the concept of direct subsidies to the U.S. Merchant Marine. We believe this policy would provide a more desirable means of supporting the Merchant Marine, and would eliminate some of the inefficiencies and the intergovernmental and interconstituency political conflicts that plague the cargo preference program and without remedy will continue to plague the program.

I would like to talk now about some general issues, including some issues that relate to the debate on the issue. I would like to share with you some of the diatribe that has recently been appearing in the maritime press that characterizes our role in the debate on cargo preference as some sort of conspiracy on the part of the international grain trade to wreak havoc in the U.S. maritime community. This is a popular story that has been going around. Of course, it is not defensible.

There is no conspiracy on the part of international companies, or American companies, or the North American Export Grain Association or anyone else to do anything to damage the interests of the U.S. Merchant Marine. There is a simple policy debate going on and I think it is unfortunate that we have gotten to the level

where we are subject to consider debate on this notion of a conspiracy.

I bring this up simply because at my last opportunity to testify on this issue before the House Agriculture Committee, I received questions and comments that seemed to suggest that some people believed that these assertions were correct, and I am here to tell you today that they are not. There are no facts to it.

I also want to clear the record with respect to NAEGA's position on various matters related to the Russia debate. NAEGA has not by word or deed or letter or statement to the administration or anyone else at anytime this year recommended waiving cargo preference with respect to Food for Progress shipments to Russia.

We are not crazy about the situation and we don't like cargo preference, but we know the law and we know what needs to be done and we have been working diligently to ensure that the law is carried out and that the conditions are not taxing either for the U.S. maritime or for the Russians. I would like to tell you, because I think you don't know, that during the course of the negotiations with the Russians in discussions I had with the Russians in behalf of the grain industry, I urged them to do everything they could to sign nondiscriminatory language to make sure that U.S. carriers got fair and equal treatment in Russian ports.

The Russians said that U.S. carriers were getting that treatment so it was unnecessary to do so. I said if they are getting the treatment, go ahead and sign the language. So we support it and will continue to support the concept of nondiscrimination against U.S. carriers in Russian ports.

Now, the representatives of the maritime community in recent testimony before this committee and other committees have talked about the need for DES-DEM commercial terms to apply to cargo preference, as a means to lower the cost of cargo preference and, therefore, lower the level of political debate about the program. Again, for the record, I want to point out that all of the reforms that they have advocated are reforms that the North American Export Grain Association, and other grain trade organizations, have been working on, and I would like to submit for the record letters to that effect, since 1991. In league with MARAD and USDA, we support commercial DES-DEM terms for U.S. carriers.

I would also like to point out that the DES-DEM terms that have been approved for some food aid programs and which have been advocated by the maritime community itself are commercial terms that are included in the NAEGA 2 contract form which is the basic contract form used for FOB agricultural exports.

It is inconceivable that we are in some conspiracy to the extent to which our commercial terms are the terms that the maritime community itself advocates. We do oppose the use of corn or the use of tankers to ship the 1992 crop corn. I know that is a point of controversy, but our experts say that that is the thing to do.

I am not going to argue with the experts on the issue. I do not have any problem with studies that might be carried out that would determine if that issue is not the case, but in the meantime, I would recommend that we continue with the suspension.

Finally, I want to end with a note on the whole issue of the agriculture versus maritime debate. It is a scorching debate, and I

favor ending a lot of the useless political haggling that goes on on the problem.

I do want to point out with respect to the 1985 compromise that the compromise was a political accommodation made at the 11th hour between a handful of agricultural representatives and some Members. It was not subject to hearings, and so therefore has not been subject to universal or widespread support in the agriculture community.

It is not because it is not a good document. It is simply because there was not a process that allowed everybody to participate in the outcome of the decision. So we observe it, but we don't necessarily express our allegiance to it. In any case, I thank you for your consideration.

We have a difference of opinion on this issue but I see no reason why our relationship has to be conflicted. I think we can work together to improve our relationship. I would like to start to—at this hearing to effect that outcome.

Thank you.

Mr. LIPINSKI. Thank you.

[The statement of Steven McCoy and letters may be found at end of hearing.]

Mr. LIPINSKI. The questioning this morning will start with Mr. Pickett. You are up first.

Mr. PICKETT. Mr. Chairman, thank you. I apologize for coming in late.

This is a subject matter that has generated a great deal of concern because of what appears to be conflicting Federal Government policy about how we are going to implement this program of cargo preference.

I think that one of the principal issues that we are trying to resolve is what needs to be done to have a uniform and consistent understandable policy throughout the Federal Government about how each agency is going to carry out its responsibility or obligation or requirements insofar as carrying cargo in U.S. flag vessels, and I would like to hear some response on that issue of just what does need to be done to clarify this issue so that the various Federal Government agencies operating in this sphere will be following a uniform policy.

Mr. Tarrant, you want to start off on that one?

Mr. TARRANT. Thank you, Mr. Pickett.

Not an easy question of course because many statutes are subject to different interpretations when it comes to implementing them on the ground.

The general language has to be translated into something that makes sense. I agree with you, there have been differing interpretations of some of the cargo preference statutes. I understand your question to be what needs to be done.

I think you are seeing a reflection of the fact that there are very legitimate constituency interests that come to bear on the various departments of the legislative branch which I think are part of a normal part of our process and that in fact leads in the case where there is latitude for interpretation of the statute to different implementation.

I do not have a simple solution to that problem. Part of it perhaps lies in the hands of Congress. Perhaps there are recommendations that the administration ought to be looking at across the board, but there is obviously no simple answer to the question, I am afraid.

Mr. PICKETT. Anyone else want to respond on that?

Mr. McCoy. I am obviously not from the State Department. I think being positioned here with State doesn't do me any good in this hearing, but I would argue that one of the problems that you face in the implementation of cargo preference is that the agencies who are charged with carrying out that obligation are agencies who have higher priorities and wider responsibilities in other areas.

Their central mission is something else other than supporting the maritime community. Consequently, from their perspective, the issues that relate to cargo preference are always going to be low on their list of priorities.

In your sense, and in MARAD's sense it is always going to be number one. So there is going to be conflict among the agencies. My recommendation to you is to eliminate this problem once and for all and go to a direct subsidy program for the Merchant Marine that is funded by MARAD, and comes out of authority out of this committee and appropriations.

If it is between you and MARAD, I think there would be no problem whatsoever with the other agencies because they wouldn't care. It would be your program and they wouldn't be responsible for carrying it out.

Mr. PICKETT. So you think the answer is to have one transportation authority responsible for administering all of the preference cargo and the various government agencies would transfer their—

Mr. McCoy. Under my scheme there would be no such thing as preference cargoes anymore. There would be one Federal agency responsible for providing direct subsidies to U.S. carriers to make sure that the rates that they offered, both to agencies for purpose of carriage of government impelled cargoes, and also for commercial cargoes, would be competitive.

In effect, what I am proposing is that we go to a system for MARAD that is similar to the system we have in agriculture for exporting commodities. We just buy down the cost of U.S. shipping and allow U.S. carriers to compete in open markets for carriage of any kind of cargo, commercial and non-commercial.

Mr. PICKETT. Thank you, Mr. Chairman.

Mr. LIPINSKI. Thank you, Mr. Pickett.

The Chair now recognizes the Ranking Minority Member of the Merchant Marine Subcommittee, Mr. Bateman.

Mr. BATEMAN. Thank you, Mr. Chairman.

Mr. Tarrant, I listened and I have read through your prepared statement with reference to the movement of cargo to Kuwait and I was very pleased when the committee, after its initiatives in the late winter, very early spring, got the communication from Secretary Christopher about those negotiations which at least on paper seem to have been successful.

And I don't mean to be caustic, but candor does require me to say that we had our hearing on that subject and focused upon it in February, and my recollection is the Department of State was invited to testify at that hearing but declined to do so, and so I would like to have a lot more sense of confidence in terms of prospects for the future that the State Department was consistently and persistently seeking to advance wherever it could and especially in conformance with a policy of the Congress, to advance the interest of the U.S. flag Merchant Marine.

It is certainly not my perception that that is occurring frequently and consistently. It is my perception, and I understand the conflicts and the economics of the problem, that oftentimes the interest of U.S. flag Merchant Marine and conformance with cargo preference laws is normally pursued on the basis at what is the least agencies can get away with rather than what is the most they can do for the merchant marine.

Now, recognizing realities, there are large dollars involved here, as Mr. McCoy points out, but there is, I think, a very justifiable, defensible, national policy that the American flag Merchant Marine is vital to the national security interest of these United States, and in order to keep it at least semi-viable, and we are doing a very poor job of it, certain things need to be done, certain sacrifices have to be made even if they cost some money.

I am not sure that there is as wide an acceptance within the executive branch of the government and a number of agencies of that national policy as there ought to be. That is more of a comment than a question, but I would like to have your reactions to it.

Also, let me by way of comment invite Mr. McCoy to also respond if he cares to. I am very sensitive to the fact that our cargo preference laws represent a cost of doing business that in a sense is artificial for the American farmer and producer, for other American producers of goods that are in the international trade circles. It is an artificial way to do something, but it is the policy of the law at this point to extend that cargo preference, and like you, Mr. McCoy, I don't like the kind of charged atmosphere that is surrounding this debate over cargo preference which seems to have become heightened to a new, but unfortunate, level.

I think we have got to look at the realities of it and as I sit here and I reflect upon a possible and not unrealistic scenario that if the name of the game in all our humanitarian aid programs and such activities is to maximize how much food gets delivered to country A, B or C, we wouldn't necessarily be buying only American grain to supply the needs of countries A, B and C. We would buy it in the international marketplace, whatever it was, however cheap it was, but I suspect the American farm community and the grain dealers would very strongly resist our buying Australian wheat or Brazilian soybeans or the rest, and so I think we have got to recognize on both sides of this equation that there are national objectives which are important and if you look at only one side of the equation, you are going to find that something doesn't seem to be realistic and fair, but you can't just look at one side of the equation. I resent very much hearing representations of the American Merchant Marine community as welfare queens of the sea coming from people whose livelihood is more deeply affected by the things the

United States Government does for them, and on their account, than is the Merchant Marine.

So with that speech out of the way, I invite your comment.

Mr. TARRANT. Thank you, Mr. Congressman.

Perhaps I could begin. Two things. I fully agree with you that an agreement on paper is not worth much unless you can translate it into something that produces a good or a service for an American company on the ground or on the dock, as may be the case here. We recognize that.

We are very sensitive to the fact that this agreement has to be translated into real benefits at the end of the day.

One thing I will undertake to do personally is to communicate to—after this hearing, as quickly as I can with Ambassador Gnehm in Kuwait the intense interest of this committee, the particular issues that have been raised, and again urge him to maintain a personal hands-on approach, and he is that kind of guy. He is a hands-on ambassador.

Maybe some of you have met him, to encourage him to maintain personal ambassadorial oversight of the process to insure that we don't lose the sense of priority that is already established in Kuwait.

Second, I would certainly agree with your comments about the vital interests at stake with the U.S. maritime industry. I have had any number of meetings as part of my responsibilities at the State Department with the last two Secretaries of Transportation as we have grappled with maritime reform as it was before, now maritime revitalization.

If this committee does not know, and I would like the committee to know that that exercise is under way this week in a very intense way within the administration to examine where we go with maritime revitalization, how do we bridge some of these gaps, some of these differences of opinion within the administration on where to put the emphasis.

I don't know what the outcome is going to be, but I can tell you that even now it is a very active senior level policy review process that is under way, and I don't think I can say much more about it than that, but I didn't want you to think that it was not a matter of very senior level concern and activity right now.

Mr. McCoy. Mr. Bateman, I thank you for your very balanced interpretation of the debate which, as you say, has become subject to what might be characterized as extreme hyperbole, even for the standards of most debates where emotions are involved.

I want to point out, though, that "welfare queens of the high seas," however inelegant a phrase, competes with "subsidy swollen grain dealers seeking shipping monopoly too," or "NAEGA, the grain grifters." So this is going on on all sides here. The allegations are wild and the suggestions wild.

The agricultural interests that are opposed to cargo preference, are not opposed to maintenance of support to the maritime community.

We would use U.S. vessels for commercial purposes if the price were offered at the same rate at which we can buy shipping from non-U.S. flag companies. The problem is that the requirement of

cargo preference on government-impelled cargoes creates difficulties in our relationships with foreign customers.

It creates difficulties in the implementation of these programs because of the interagency conflicts that take place. It creates difficulties in terms of negotiating agreements. I point out that in negotiating the agreement with the Russians announced by the President in Vancouver, it took months to get the final agreement signed. It isn't even really signed yet, and one of the bones of contention, rightly or wrongly, throughout the process was how we implement cargo preference.

So I don't disagree that there are many interests that must be served by government policy. The only thing I am suggesting is that there should be one policy for each interest. You shouldn't make many agencies try to do something that would be better done by one agency and one program, and in that way, you would eliminate any cause of competition between these various constituencies.

The issue of agriculture versus maritime would disappear overnight, as would the issue of maritime versus State and on and on and on.

Mr. BATEMAN. Maybe another round.

Mr. LIPINSKI. Thank you, Mr. Bateman.

Mr. Bateman said there may be another round there. Maybe another round if we can make the questions a little bit shorter and the answers a little bit shorter because we only have until 11 o'clock in this room and then we have to vacate it because we have another meeting immediately thereafter.

So please try to make the questions shorter, the answers shorter.

The chair recognizes Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

Let me begin by thanking you for even having this hearing and for your tremendous interest in this.

I sat back for about three years on this committee, along with Mrs. Bentley and some others, and did not see the interest in preserving the American fleet that I had wished this committee would show, and I have certainly seen it in the past couple of months and I want to commend you and Mr. Studds for what you are doing.

Mr. McCoy, I find myself in agreement with you on something and you said basically that part of the problem here is that we have many policies and we require different things of different people. The grain that is produced in the Midwest, how much of it is shipped on American-owned railroads?

Mr. McCoy. I don't know. I don't know what the distribution of foreign ownership of American railroads operating in the United States is. It wouldn't surprise me that some of the railroads operating in the United States are actually Canadian owned. It is hard for me to tell. I have never looked into it.

Mr. TAYLOR. It is my guess that you would find that people working on those rails are either all American citizens or a small percentage of legally admitted aliens. Let's just—for the matter of the course of this conversation, let's say 100 percent.

Grain that is produced in the Midwest, shipped to our Gulf Coast ports to be exported by barge, what percentage of that goes on American flag carriers?

Mr. McCoy. Again, I don't know, but I imagine 100 percent is going to be the answer.

Mr. TAYLOR. Mr. McCoy, I can tell you I used to run a patrol boat for the Coast Guard on the Mississippi River and never saw a single foreign flag barge on the Mississippi River.

Mr. McCoy. I would also point out that we have Jones Act prohibitions about the use of foreign vessels.

Mr. TAYLOR. We are getting to the point, Mr. McCoy, you see, I think you are exactly right when you say that we shouldn't have differentiating rules because it puts Mr. Tarrant in the position of having to be a bean counter and trying to keep track on a day-to-day basis whether or not he is living within the 75 percent and living within the vast, you know, number of laws that have been passed over the years, some of which are conflicting.

And I am going to agree with you, Mr. McCoy, that it is something Congress ought to address. I think Congress ought to change the law and require 100 percent of our product to be shipped on American flag carriers. Quite frankly, you somehow survived when 100 percent of the grain is shipped out of the Midwest to the Gulf Coast ports on American flag barges. Never hear any complaints about that.

You somehow survive when 100 percent of what is shipped by rail goes on American-owned rail lines, and yet the only time we have a problem, if you have noticed this, is when we get into this accounting game, and quite frankly, you know, let's get back to the original purpose. Why do we run this country? Who do we run it for?

Would you like to answer that for me, Mr. McCoy?

Mr. McCoy. First of all, let me make a couple of points. I think U.S. policy shouldn't be about survival. I think it should be about progress and development and profitability and economic growth for the American people.

The way you provide economic growth to the American people is you maintain competitiveness, the competitiveness of U.S. products in international markets and the strength and vitality of the U.S. economy and competitiveness of companies domestically.

Philosophically I make no distinctions between American versus non-American firms. I welcome all people to come to the United States to build the economy of this country. I welcome anyone with respect to grain sales from any country who wants to buy or sell U.S. grain to go ahead and do it.

My job is to sell U.S. grain. I don't care who sells it so long as someone buys it.

Mr. TAYLOR. Mr. McCoy, the question was, who do we run this country for and you answered with, I don't care where they come from.

Mr. McCoy. That is—it is a rhetorical question.

Mr. TAYLOR. That is the difference between you and I, Mr. McCoy.

Mr. McCoy. Who we run this country for is a rhetorical question.

Mr. TAYLOR. Answer it.

Mr. McCoy. We don't run the country. If you ask, "Who do we run the government for?" it is for the people. But the country runs itself. We don't run the country.

Mr. TAYLOR. We do. We make the laws for this Nation. When you make the laws, we are the rule of law and the question is, who should we be making these rules for.

Mr. MCCOY. The rules should be made for the American people. The rules of the government—

Mr. TAYLOR. Thank you, Mr. McCoy.

Mr. MCCOY. Policies of the government.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. LIPINSKI. Thank you, Mr. Taylor.

The Chair now recognizes Mrs. Bentley.

Mrs. BENTLEY. Thank you, Mr. Chairman.

Mr. Chairman, I want to join in with Mr. Taylor's comments thanking you for continuing with this examination of the cargo preference situation.

Mr. McCoy, at the agriculture appropriations hearing last week you stated you represented a little association. It is my understanding that NAEGA has about 40 members, including all of the biggest multinational grain houses and some of the biggest companies in the world. The largest grain houses are owned by some of the richest people around the world.

Do any of the companies belonging to your organization have foreign parent companies?

Mr. McCoy. All of the companies that are members of NAEGA by the by-laws of NAEGA are required to be U.S. incorporated companies.

Mrs. BENTLEY. That is not what I asked. I asked you whether they have foreign parent companies.

Mr. McCoy. Yes. Some of the companies have affiliations with foreign companies.

Mrs. BENTLEY. All of them?

Mr. McCoy. No, not all of them.

Mrs. BENTLEY. 50 percent, 70 percent, 80 percent?

Mr. McCoy. It would be difficult to say.

Mrs. BENTLEY. Come on, Mr. McCoy.

Mr. McCoy. Well, it is difficult to say. I would say that some do, some don't, and it depends on how you defined it.

Mrs. BENTLEY. What countries are involved in the foreign parent companies?

Mr. McCoy. Well, a multinational company typically might include within its organization—

Mrs. BENTLEY. I asked—are they Japan, Switzerland, Italy and Canada?

Mr. McCoy. I beg your pardon?

Mrs. BENTLEY. Are they Japan, Switzerland, Italy and Canada?

Mr. McCoy. There is a possibility of connections in those countries.

Mrs. BENTLEY. Do those foreign interests benefit from foreign aid paid for by American taxpayers?

Mr. McCoy. No, not at all.

Mrs. BENTLEY. They don't from the grain subsidies they receive?

Mr. McCoy. No.

Mrs. BENTLEY. They do not benefit?

Mr. McCoy. No.

Mrs. BENTLEY. Mr. McCoy, think of what you are saying.

Mr. McCoy. I am saying exactly what I just said. No. The foreign interests don't benefit. The beneficiary, if there is any beneficiary as far as a grain company is concerned, would be a U.S. incorporated affiliate.

Mrs. BENTLEY. Controlled and owned by the foreign parent company, Mr. McCoy.

Mr. McCoy. I am sorry. It is irrelevant who would control or own a company.

Mrs. BENTLEY. Come on, Mr. McCoy, let's not play Tiddley Winks. Is NAEGA required to register as a lobbyist for foreign countries under the Foreign Agent Registration Act?

Mr. McCoy. I beg your pardon?

Mrs. BENTLEY. Is NAEGA required to register as a lobbyist for foreign companies under the Foreign Agent Registration Act?

Mr. McCoy. No, we are not.

Mrs. BENTLEY. But you have all these multinational companies.

Mr. McCoy. As I say, the companies who are a member of NAEGA are members by virtue of their U.S. incorporated status.

Mrs. BENTLEY. Do any of your members own foreign flag vessels?

Mr. McCoy. I don't know.

Mrs. BENTLEY. Come on, Mr. McCoy.

Mr. McCoy. I am sorry. I don't know. I don't know. I would assume that some would but frankly it has never been an issue that I have been intensely interested in.

Mrs. BENTLEY. I would like an answer for that and I would like a specific answer for that, the numbers and who.

Mr. McCoy. I would be happy to do my best to provide that.

Mrs. BENTLEY. And with that, some of the foreign aid that is paid for the cargo carried on these vessels means that your association companies also benefit from the American taxpayers' dollar.

Mr. McCoy. I will do the best I can to provide any information you request.

Mrs. BENTLEY. All right, and if you are so concerned about the needs of people overseas, should not our foreign aid tax dollars be spent on grain in other countries where it also is cheaper?

Mr. McCoy. I don't believe so. I think that I can demonstrate, if we had the time, that the U.S. grain that is sold under these programs is the cheapest grain that could be made available to these people of the type they want, with the assurance of quality and delivery, that they could get at any time.

This is one of these debating points that we simply disagree on. I think that U.S. grain is as cheap as it could possibly be for the beneficiaries of these programs. If we need to cheapen it still, I would say, fine. Let's do it. Let's apply export enhancement subsidies on top of Public Law 480. But the problem is that the USDA believes that it is already so cheap that to lessen the price would involve us in international trade disputes, and also would be a violation of the congressionally imposed restriction with respect to disincentive of production in food aid receiving countries.

So, again, I don't think there is a point to be made here that these programs are forcing high priced wheat down the throats of unwilling customers. And I want to point out one other thing because we get into this constantly. Wheat is not wheat, is not wheat,

is not wheat. There are an infinite variety of different kinds of wheat. Not all customers demand the same kind of wheat.

A customer typically not only demands wheat, but he also demands wheat in a condition and of a type that he can utilize. There is no point for the United States to be going around the world trying to sell wheat that is not up to our standards on a commercial basis.

So I take issue with the notion that somehow U.S. wheat is more expensive than it should otherwise be.

Mrs. BENTLEY. Just one last comment, Mr. Chairman. I know my time is up.

Mr. McCoy, here is a list, about eight pages long, of all the foreign flag vessels owned by your companies.

Mr. McCoy. I would be happy to take a look at it.

Mrs. BENTLEY. I would like to see yours, see how it matches this, and one last comment, I just want to say the Export Enhancement Program from 1985 to 1990 cost \$3.7 billion.

NAEGA member Cargill received \$688 million in EEP bonuses. NAEGA member Dreyfus, a French owned company, received \$503 million. The subsidies of Dreyfus and Cargill are paid to make up the difference between higher priced U.S. grain and lower priced foreign grain.

Are you opposed to subsidies?

Mr. McCoy. I would favor the elimination of all subsidies. We maintain the Export Enhancement Program as a means to maintain our competitiveness vis-a-vis the EC and consequently so long as EC subsidies exist, so too also will our subsidies.

I do want to point out that what I am advocating for the maritime community is the same thing that you seem to attack the agriculture community for. I believe—

Mrs. BENTLEY. There is one difference, Mr. McCoy. I have always voted for the agricultural community as well as supported the maritime community, OK? Enough. Our time is up.

Mr. LIPINSKI. Thank you very much, Mrs. Bentley.

The Chair now recognizes Mr. Hastings.

Mr. HASTINGS. Thank you, Mr. Chairman.

Mr. McCoy, lest you think all of us are structured the same, I am curious to try to dialog with you in a meaningful manner that may bring that resolution that you seem to suggest might be here. I am hopeful that it is, and perhaps mine is not a question to you but a suggestion.

You may wish to admit at some point, not today, that the North American Export Grain Association has in its membership people who are benefiting by making money from the sale of grain and the operation of foreign flag vessels, and that is just a given. I mean, you know, it is called the American way.

So when cargo on Archer Daniels and Louis Dreyfus and other companies that you represent, are all part of your association, make money, then our argument is that it would be better if some of that were divided, and I have difficulty understanding your premise of subsidy. I really do.

You say subsidize the Merchant Marine people. That comes out of the American taxpayer pot.

Mr. McCoy. Right.

Mr. HASTINGS. And we give foreign aid to Russia. That comes out of the American taxpayer pot, then we subsidize the grain industry in relative part. That comes out of the American taxpayer pot.

In short, we get it going, coming, up, down, around and around, and you are saying, come on and subsidize yet another one, and we are saying, don't do that. Just give everybody a level playing field and let American flag vessels carry this grain.

I have difficulty understanding the subsidy. Can you help me with that? Why would that be beneficial, and what would stop? What would stop you from having the same international trade complications if the American flag vessels were subsidized?

Mr. McCoy. Let me first of all state that while I am the only witness here today that comes from an agricultural perspective, I can't be expected to defend every agricultural program and every subsidy that exists for agriculture. I don't, and I don't pretend to do that, and I believe that there are important reforms that could be enacted within the agricultural program that are well needed.

But, again, it is not my place to do that. Those decisions are made next door, to which the Congress accedes.

I believe that a direct subsidy scheme would work because of the reasons I pointed out before. The whole concept of cargo preference is to require a cargo to be produced through governmental action for a U.S. carrier. This is a cargo that wouldn't otherwise exist, so you are requiring the government to produce cargo for carriers. It seems to me that that is not a function that the government is appropriately designed to carry out.

We have an agency, the Maritime Administration, whose sole purpose for existence is creating cargo for carriers.

Now, I say that the cargo exists. It is out there, and the issue isn't the absence of cargo; it is the cost of carriage on U.S. flag vessels. The appropriate policy, it seems to me, therefore, is not in forcing agencies like the State Department to create cargo, it is to give our merchant carriers a subsidy to enable them to go out in the marketplace and get the business.

Mr. HASTINGS. Let me ask, Mr. Tarrant, with regard to the United States Government guarantees, other Federal departments such as Treasury and Defense have issued United States flag shipping and reporting requirements on their programs to comply with cargo preference.

Has the State Department issued similar instructions for applications to its programs and if so, when and if not, why?

Mr. TARRANT. Let me be sure I understand the question, Mr. Congressman. You mean with regard to the shipments that the State Department makes?

Mr. HASTINGS. Yes, sir.

Mr. TARRANT. As a department?

Mr. HASTINGS. Yes, sir.

Mr. TARRANT. I believe I have some numbers here if you will bear with me very briefly.

Mr. HASTINGS. Thank you, Mr. Chairman. He is just getting a response.

Mr. TARRANT. I do have a table of numbers here but I am mindful of the fact—

Mr. HASTINGS. Will you just supply them to me?

Mr. TARRANT. Can I send you a letter, Mr. Congressman?

Mr. HASTINGS. Thank you so much, Mr. Tarrant.

Mr. LIPINSKI. The Chair recognizes Mr. Kingston.

Mr. KINGSTON. Thank you, Mr. Chairman. Mr. Stupak was here before me, if in keeping with the courtesy, maybe I should yield my time to him or spot to him if you would like. Since I came in last and I think that is your system, usually since Mr. Stupak——

Mr. LIPINSKI. I was going to give him a little bit more time. So if you have a question, go ahead.

Mr. KINGSTON. The only question I have is a quick question for Mr. McCoy. You were in the middle of a statement comparing agriculture and Merchant Marine subsidies and your time ran out. I was wondering if you wanted to go ahead and finish that.

Mr. McCoy. I probably have already said too much today. I can't recall what my thought was at that time, but I would be happy to answer if you could prompt me a bit. I can't remember where I left off last.

Mr. KINGSTON. I think your lead statement was something that we are subsidizing Merchant Marine and criticizing agriculture subsidies or something along that line, and——

Mr. McCoy. Well, again.

Mr. KINGSTON. (Continuing)——it was comparing the two.

Mr. McCoy. I think there are many more things involved than just consideration of maritime policy because we have different philosophical underpinnings.

We like to lessen rather than increase government intervention. We are indifferent, as I said before, to who does what, whether foreign companies versus U.S. companies are beneficiaries so long as the objective is the U.S. product, grain, moves.

We are vitally concerned about competitiveness and maintaining conditions of competitiveness, and vitally concerned to prevent anything that conflicts with that and there may be Members of this committee who disagree fundamentally with those basic premises.

We are not experts on it, but if you, the Congress, tell us that there is a vital need to support the U.S. maritime community of this country, for whatever reason, including for national security, we are not going to argue with you. We are going to accept that and we are happy to accept that.

Again, we are just like everyone else in the United States. We are not part of an undertaking here somehow designed to defraud American interests and promote foreign interests. We are an association that is established to promote the sale of a U.S. product the ultimate beneficiary of which is a U.S. farmer.

It is the manner in which cargo preference creates difficulties for us in other areas that is also the source of our problem and the reason why I am here today. I don't want to keep repeating myself, but let's create separate streams for separate functions. This is what you do in a business all the time.

If you have all your managers fighting each other, you create separate streams and give people separate missions. You give them the tools to enable them to achieve their objective and you let them go, and this is what we should be doing with these policies.

You give one manager five different functions and give him inadequate tools and you have got an organizational and political prob-

lem that you will never get out of. I don't want to be Ross Perot and say that business can answer all the questions of government, but the bottom line is I think there are ways of improving this program that would better serve the objectives of your constituency.

Mr. KINGSTON. Thank you, Mr. Chairman.

Mr. LIPINSKI. Thank you.

The Chair recognizes Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman, thank you Mr. Kingston for your courtesy there.

Mr. Tarrant, I went through your testimony and I read it and I have listened to you today and I guess the frustration that I have and being a new Member on the committee but the short time I have been here, is the frustration that we see.

If you look at your testimony on page 3, you are talking about Kuwait and you say we fully anticipate U.S. firms will over time benefit significantly from this change to competitive conditions. We have a law, cargo preference law, and that statement in dealing with Kuwait really doesn't sound like cargo preference.

Next page, on page 4 you talk about Israel. You say, U.S. vessels will have a reasonable share of the cargoes generated by the loan guarantee program for Israel. Again, doesn't sound like cargo preference to me. Then you go to page 5, cargo preference for humanitarian assistance, you indicate in the bottom of the page, the Maritime Administration and Agriculture Department are working together to offer U.S. carriers a fair share of the cargo at the most economical costs possible. Again, in each one of those cases, it doesn't sound like cargo preference laws, and I think we are frustrated.

We have laws on the books where up in my neck of the woods we call it double-talk. We say we are going to do it, we have a law but we use words like fair share, maybe, possibly, sometime in the future. I think we owe it to the Merchant Marine industry and also the US taxpayer to make sure those laws are fully executed with no fair share but to the law and that is the frustration I feel and I am sure other Members on this committee do.

You may or may not want to comment. I guess that is more of a statement on my part.

Mr. TARRANT. I will comment, Mr. Congressman.

My time in the Foreign Service I have always made it a point not to talk double. I talk business, I talk Congress, but I don't talk Foreign Service and I will be very straight with you.

If you are in any way uncertain about whether the State Department is in compliance with any of the existing statutes, I would certainly like to know about it because I don't believe we are out of compliance.

Mr. STUPAK. Are you saying then fair share means cargo preference then to the 75 or 50 percent?

Mr. TARRANT. In some of the legislation which we have been given by Congress, the terms like that which are qualitative in nature rather than precise, have to be turned into on the ground decisions.

We try to make the best decisions we can under the circumstance, but it doesn't say in some cases anything except fair or competitive. Those terms are sometimes difficult to translate into

precise numbers, and we try and bridge the various constituencies that have legitimate concerns within the U.S. Government, within the private sector, and we are not going to get it right all the time to satisfy every single Congressman, but it is certainly a very straightforward effort on our part to do so.

Mr. STUPAK. Hopefully your appearance here today and finally coming to our committees, hopefully you will understand the sense of this committee and the sense of Congress when we write those laws, we like them carried out verbatim.

Mr. McCoy, you indicate direct subsidy scheme. In light of the tight budgets that we have, would the agricultural groups then be willing to give up their tax breaks, field tax breaks, direct subsidies and would they be willing to give them up in exchange to make the U.S. Merchant Marine more competitive and maybe we could do away with cargo preference.

Does that sound like a fair solution to you?

Mr. McCoy. I think that if the deal that was offered, for example, was that funding now devoted for this purpose allocated to USDA would be provided elsewhere, I don't think anyone would have a problem with that.

Mr. STUPAK. I am not talking USDA, I am talking like BTU tax we passed here in the House where farmers only had to pay half of it. The direct subsidies we give to farmers. If we could—

Mr. McCoy. Again, it is not a zero sum game here. The reason that we have all these subsidies is because the Congress has deemed them to be appropriate. Agriculture, the agriculture community, is not a monolith that creates and demands all of these subsidies.

Different people have different reasons for different subsidies. I think the bottom line is that with respect to the money that USDA spends to support this program, if the offer was made to get that money out of the USDA budget and put it over in MARAD and do it over in MARAD through a direct subsidy program, I think that the answer to that offer would be yes.

Mr. STUPAK. So you would be willing to do that on behalf of the groups you represent?

Mr. McCoy. I can't commit for everybody, but what I am saying is that we understand the equity issue here. Again, we are not opposed to spending taxpayer money to support the Merchant Marine.

We are simply opposed to the medium by which that support is currently providing through cargo preference. If money is the issue, I think the maritime community can get the money, they can get it from the agencies.

There are appropriated funds that State spends to conform with cargo preference, that Transportation spends, on and on. USDA spends. Bundle all those up. Go to the Appropriations Committee, sit down with them and say instead of giving 250 to Agriculture, 50 to State, 300 to AID, let's bundle it all up into one program, take it away from the budgets of the other agencies, give that funding to MARAD, eliminate cargo preference, give them authority to operate a direct subsidy program, and I think that the result would be twofold.

First, people would start to use U.S. flags again for commercial carriage of cargoes, and secondly, you release the U.S. carrier from, in effect, its bondage to these programs and to these agencies. You promote the one thing that we should be promoting which is the progress and the development of the U.S. Maritime community as a commercial entity, a growing commercial entity.

Mr. STUPAK. Thank you.

The survival is more than just the maritime industry or the farming industry. It is really the U.S. taxpayer and we are in a zero sum game.

Thank you.

Mr. LIPINSKI. Thank you.

Ms. Schenk, do you have any questions for our witnesses this morning?

Ms. SCHENK. I do, Mr. Chairman. In light of the fact we have a vote, I will make it very brief.

It is for Secretary Tarrant. Sir, can you just tell me, it is sort of follow-up to Congressman Stupak's question, what mechanisms the State Department uses to monitor the enforcement of cargo preference with foreign countries?

Specifically what mechanisms, how is it done, how is it monitored?

Mr. TARRANT. Are you asking the generic question or are you country specific?

Ms. SCHENK. Generically.

Mr. TARRANT. I would say that there is no mechanism that I can point to that says we have a committee which sits down and monitors every action and every contract.

Rather, we, I suppose, do it in two ways. One, we have a watching brief in general because you never know whether this issue is going to jump up in one country or another. We don't want to create a heavy mechanism, but I think most importantly, we depend upon private sector people who think that they are not being well treated, fairly treated in foreign countries to flag for us because they are going to know about it first, whether they are being disadvantaged.

At that point we try and make some judgment. My staff in particular, Office of Maritime Affairs is very quick off the block whenever we get one of these complaints to try and resolve it as fast and as equitably and in the American favor as we can, whether it is problems that we have been dealing with, for example, in Beijing where some of our carriers have not been able to set up offices. We jumped in immediately and have been able to get them the necessary infrastructure to do business in China.

We have been working in Venezuela and Brazil, any number of countries to make sure that whatever the comparable objectives are are met.

Ms. SCHENK. How about with Kuwait specifically? What, if anything, is your office doing there?

Mr. TARRANT. Well, with Kuwait, we began in as early as 1991. We recognized this problem in the aftermath of Desert Storm. We began, I think, fairly soon after that, recognizing that the right of first refusal on the part of the Kuwaiti government was not a fair thing in view of the outcome of Desert Storm in particular and we

began before we were asked by the industry to try and get a more equal treatment, the equal right to bid on cargoes for American shipping lines.

It involved the Secretary of State personally, it involved the ambassador personally, it involved me. I think it is too early to tell exactly how it is going to work, because I don't want to give you paper promises, but I think the mechanism is not rigid, if mechanism is your question.

We look at particular problems when they come up and we try and deal with them.

Ms. SCHENK. So in other words, there really isn't a mechanism per se?

Mr. TARRANT. There is a committee. There is a very good mechanism. It is, we look, we wait for the industry to tell us whether there are any problems and we jump on the problem in each case. The situation in Kuwait is going to be different than the situation in Beijing.

I don't think it would be useful to set up a heavy mechanism, committee structure, review processes in view of the kinds of problems that we face. I don't think it would be cost effective.

Ms. SCHENK. Well, we may disagree on that, but, Mr. Chairman, I will yield back the balance of my time in light of the fact that we do have a vote.

Mr. LIPINSKI. Thank you.

Mr. Ackerman.

Mr. ACKERMAN. Pass, Mr. Chairman. No questions.

Mr. LIPINSKI. Thank you very much. We do have a vote. We do have a limited amount of time.

I want to thank our witnesses here this morning. I wish we could go on. Mr. Bateman had another question, so did Mrs. Bentley, but we are going to have to move to go ahead and vote.

I think the questions asked this morning by the Members of the committee were excellent questions, and I compliment all of them for that. They did a superb job.

I thank you for being here. I want to mention to all the Members of the committee that we have a briefing on the National Shipbuilding and Conversion Act immediately after this vote. So if you would return here, you can become better informed.

Thank you all. Good morning.

[Whereupon, at 11:10 a.m., the Subcommittee was adjourned; and the following was submitted for the record:]

STATEMENT OF JOAN B. YIM
ACTING MARITIME ADMINISTRATOR

DEPARTMENT OF TRANSPORTATION

BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE
OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES

JUNE 8, 1993

Mr. Chairman, members of the Subcommittee, my name is Joan Yim and I am the Acting Maritime Administrator for the Department of Transportation. I am pleased to be here today to comment on cargo preference issues pertaining to Russian aid and the \$10 billion loan guarantee program to Israel. I appreciate the opportunity to address these programs which support our national security and domestic and international economic policies.

By way of background, it may be useful to note that U.S. cargo preference programs have been statutorily prescribed for military cargo since 1904 and for non-military cargo on a permanent basis since 1954. These laws require that government owned cargoes or foreign assistance cargoes which are either donated or government financed at concessional terms be shipped wholly or partly on U.S.-flag vessels.

The underlying concept for these requirements is twofold. First, taxpayer money that underwrites donated aid should return a portion of its value to the U.S. economy through shipment on U.S. vessels. Secondly, supporting the vitality of the U.S. merchant marine helps to assure the availability of U.S.-flag vessels and crews during times of national emergency and the development of our commerce in peacetime.

President Clinton has signalled that his administration intends to abide by longstanding maritime policy in the movement of aid financed by the American taxpayer to the Russian people. This Administration is also committed to resolving the long-term policy disputes among Federal agencies over the use of U.S.-flag vessels.

I will now touch upon the cargo preference programs as they relate to areas of Congressional concern: Aid to Russia and the Israeli Loan Program.

AID TO RUSSIA

President Clinton's new aid program to the Commonwealth of Independent States (CIS) consists of low cost concessional agricultural credits under the Food for Progress program. Since it is a U.S. food assistance program, it is subject to preference. U.S. carriers are thus

entitled to move at least 75 percent of this traffic and the American taxpayer should be assured that unnecessary charges will not be imposed, either by the recipient nation nor the vessel operator, simply because the U.S. Treasury is footing the bill.

A number of problems in the Russian trade have put upward pressure on U.S.-flag rates. MARAD has had a system in place for years to prevent excessive rates, called the fair and reasonable guideline rate. Each potential contract award is scrutinized relative to vessel costs which are filed annually with MARAD. No bid is accepted if it exceeds the "guideline rate" calculated on that vessel's cost plus a modest profit. USDA became concerned that high rates would cause them to run out of freight money. MARAD approached USDA to establish a working group to deal with the problems. Our goal was to assure that the President's commitment of \$700 million in agricultural aid reaches Russia in a timely fashion, and at the same time U.S. carriers receive their fair share of cargoes at the most economical cost possible. Further, it was our intent to dispel some of the controversy regarding inflated U.S.-flag freight rates that were being bandied about which, if offered, were rejected as not meeting the fair and reasonable guideline rate. To allow such a controversy to continue within the agencies does not serve the Administration well nor the American people.

The group met numerous times over several weeks and identified issues in a number of important areas. In doing so, an overriding concern was to distinguish fact from opinion so as to concentrate on actions which could address the problems. The issues included:

- 1) Discharge terms
"Free out" terms (which provide that expenses associated with cargo discharge are for the charterer's rather than the vessel owner's account) function as an incentive to the receiver to discharge quickly. A fast discharge earns the receiver additional money; a slow discharge incurs additional costs to the receiver. Free out, along with priority berthing for U.S. carriers at Russian ports, was important to lower U.S. flag rates.
- 2) Payment Terms
Commercial voyages are paid upon leaving the load port whereas preference voyages are not paid until after arrival at the discharge port. There are frequent payment delays. However, MARAD has asked and USDA has agreed, to pursue this issue as part of our longer term discussions.
- 3) Fumigation
These costs and delays are normally the charterer's responsibility. Under preference they are the vessel owner's risk. USDA and MARAD agreed to pursue a dual rate system. We were unable to implement it in the short time available with the current Russian

aid package, but future tenders will include dual rates. There will be further discussions with the Russians regarding who will pay the fumigation costs for the program.

4) Vessel Discrimination

Exclusion of vessel types, such as tankers or barges, lessens competition. USDA has issued a policy that importing countries may exclude tankers from carriage of 1993 feed corn. However, they are performing their own analyses and will examine the data. If the facts support a change, the Russians may wish to include tankers. We are planning to sponsor meetings between the feed corn representatives and tanker operators to review this issue and we will continue to monitor this issue closely with USDA.

I am sure USDA will discuss the details of their agricultural agreement with Russia, but I would like to report on the outcome of key freight issues. Russia agreed to establish a joint U.S./Russian working group which will monitor Russian port conditions on an ongoing basis. The group will be available to answer any questions U.S. carriers have as they develop their bids. We are closely tracking food aid shipments under earlier programs and will assess these vessels' experiences in unloading their cargoes. This information will be made available to the other carriers as they prepare bids. In other words, U.S. vessel owners will have a clearer picture of their true risks. On the Russians' part, they will have incentive to discharge quickly because they have been assured that any freight savings will be available to them for more commodities of their choosing. I think we made very significant strides.

Before I leave this subject, I want to point out that MARAD and AID sent a team to scrutinize port conditions in Russia during 10 days in May. They have reported congestion problems in Novorossiysk and St. Petersburg, and that there is a potential shortage of rail cars when the Russian harvest begins in July. If there are not enough rail cars and no storage facilities, ships will have difficulty unloading their cargoes. This is an area we will be monitoring very carefully. MARAD's ports expert will be returning to Russia June 12 as part of a U.S. Government mission to examine the ports and make recommendations on how to improve their efficiency. He will be on the spot for about three weeks, providing us with up-to-the minute reports on port conditions.

I have discussed our inter-agency efforts to solve problems in our preference programs. This is not a one-shot thing. MARAD is committed to an on-going effort. USDA and AID will join us in looking at the problems faced by both shippers and carriers. Some of the issues we will try to solve I have already mentioned. We will all work toward a preference program that serves the national interest as well as the agriculture industry and the maritime industry.

ISRAELI LOAN GUARANTEE PROGRAM

Now I would like to turn to the Israeli \$10 billion loan guarantee program. Last winter, we contacted the Israeli embassy to request that they voluntarily assure carriage of cargoes generated by the program for U.S. carriers. We have had an ongoing dialogue with the Minister of Economic Affairs at the Israeli Embassy. It is our understanding that much of any freight moving will be high value, low volume commodities that will probably be air freighted. However, the minister was receptive to working with our industry to identify market leads. In this regard, the maritime industry is considering a mission to Israel to pursue market contacts. MARAD is working with the Department of Commerce to develop market lead information which we will pass on to the carriers as well.

MARAD has suggested that language be included in Israeli bank loan documents which encourages the purchase of U.S. commodities and transportation services. We will continue to discuss the purchase of U.S. goods and services, including shipping, with the Israeli government. MARAD will continue to work to ensure the maritime industry receives a fair share of the cargo shipped to Israel.

UNIFORM CHARTER PARTY

Finally, I would just like to touch upon the regulation being considered regarding uniform charter party terms that would address, for example, the problems I mentioned earlier in relation to the Russian grain program. We are now trying to answer questions raised by USDA and AID over MARAD's authority under Section 901(b)(2) to issue such a regulation. It is our desire to resolve any problems quickly and to move forward with a proposal in the near term.

CONCLUSION

Finally, and most significantly, Secretary Peña and Secretary Espy have set the cooperative direction for their efforts to address cargo preference issues. Our respective agencies are taking steps to deal with cargo preference issues for the benefit of agricultural producers, shippers, and carriers. We at MARAD plan to move forward and not lose momentum as we begin discussions on longer term issues. We intend to comply fully with the letter and spirit of the law. That concludes my prepared statement, Mr. Chairman. I will be happy to respond to any questions you or Subcommittee members may have.



U.S. Department
of Transportation
**Maritime
Administration**

Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

20 JUL 1993

The Honorable William O. Lipinski
Chairman, Subcommittee on Merchant Marine
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am enclosing the Maritime Administration's responses to the questions for the record of your Subcommittee's oversight hearing on cargo preference laws on June 8, 1993.

Please contact me if I can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joan B. Yim", with a stylized flourish at the end.

Joan B. Yim
Acting Maritime Administrator

Enclosure

Question 1: Which department should determine whether cargo preference applies to a particular movement of government-impelled cargo? Should there be any review of those determinations? If so, by whom?

Answer: The Department of Transportation (DOT) already has statutory authority to determine whether cargo preference requirements apply to a particular movement of government-impelled cargo; the problem is with the practical application of this authority. Section 901(b)(2) of the Merchant Marine Act, 1936, as amended, provides: "Every department or agency having responsibility under this subsection shall administer its programs with respect to [cargo preference] under regulations issued by the Secretary of Transportation." The legislative history makes clear that Congress intended DOT to have preeminent authority over other government agencies on matters arising in administration of the cargo preference program. However, issuing regulations is a slow and laborious process, requiring interagency discussion. In the case of interagency disputes, resort must be made to the Attorney General for resolution, which is also a lengthy process. DOT does not presently have, but should have, the authority to make cargo preference determinations on a timely basis without having to go through the rulemaking process. Too often, the cargo has been shipped by the time DOT can bring its present authority to bear. Review of DOT determinations should reside in the Department of Justice.

Question 2: Are there any agencies or departments that you would characterize as actively seeking opportunities to employ U.S.-flag vessels as opposed to seeking means by which to avoid application of preference laws?

Answer: The Defense Security Assistance Agency (DSAA) established and supports a 100 percent U.S.-flag shipping policy for the foreign military financing (FMF) program. FMF is subject to the 50 percent provision of P.L. 664. There are general waiver provisions allowing the recipient country's flag-vessels to participate in up to 50 percent of the cargo movement.

Additionally, DSAA requires transfers under the Southern Region Amendment (SRA)/Section 516 and Section 519 of the Foreign Assistance Act of 1961, as amended, to be shipped exclusively on U.S.-flag vessels unless the recipient country has a general waiver in its FMF program. The enabling legislation for these programs contain the "notwithstanding any other provision of law" language which exempts the transfers from cargo preference.

Question 3: Do you have any suggestions as to what could be done administratively that would enable U.S.-flag operators to offer lower rates:

Answer: Freight rates will only be lower if risk to the ship operator is reduced. Currently, risk is high because there is congestion at the discharge port and because non-commercial terms are contained in the charter parties (freight contracts).

The congestion risk can be alleviated if "berth terms" are eliminated and replaced by "free out" discharge terms. Current berth terms in the discharge contracts allow the receivers of the grain shipments to keep a vessel in the port indefinitely with no penalty and provide free storage aboard the vessel waiting to offload. The vessel owner will try to estimate the cost of these delays and put them in the freight rate. Adoption of free out would provide an incentive for fast discharge of cargo from the ship and a penalty for slow discharge.

Utilization of standard maritime commercial terms in the shipping contracts would reduce risk. For example, currently owners engaged in cargo preference trades are not paid until arrival at the discharge port. The vessel owner is forced to be the bank for the most expensive part of the voyage. Commercially, owners are paid upon completion of loading the cargo onboard. If this standard payment term is part of the freight contract, rates would be reduced.

MARAD has promulgated a uniform charter party regulation which is currently being reviewed within the Administration. This new charter party would utilize free out terms and provide for payment upon completion of load thus reducing risk, making the program more commercial, and lowering the freight rates.

Question 4: I understand Secretary Pena and Secretary Espy have agreed to work cooperatively to resolve their department's differences on the application of cargo preference laws. What steps do you foresee taking place as part of this cooperative effort?

Answer: The first step was the creation of the MARAD/USDA Working Group in April, 1993. The answer to Question 5 describes the results of those meetings.

Question 5: We are delighted that MARAD has been working with USDA to improve conditions for U.S.-flag vessels and thereby to reduce program costs. What progress has been achieved to date, particularly with respect to grain shipments to the Russian Republic? Will this cooperative effort extend beyond the Russian situation and into other areas of concern? What should be the focus of your next efforts to reduce shipping costs?

Answer: The agreement by Secretary Pena and Secretary Espy to work cooperatively has had a very productive effect on the USDA/AID/MARAD Russian Working Group. As a result, USDA has agreed to work closely with the Russians to minimize delays and shipper discharge problems. The three agencies are working together on developing Russian/CIS/Baltic port information. One trip to Russia has occurred and another is projected for August. The \$700 million Russian aid package is still in the planning stage. We are having weekly meetings with USDA to ensure that all steps are taken to minimize freight rates.

The Russian Working Group has expanded to become a general cargo preference working group. At meetings, potential problems and further cooperative efforts are discussed. We are using this forum as a mechanism to unify the data collection and reporting systems of the agencies. Once accomplished, data recording will be identical. This will reduce interagency disputes significantly. We are committed to discovering similar opportunities for efficiencies during the working group process.

Question 6: We understand that a Marad employee recently traveled to Russia to examine that country's port conditions. Could you provide some insight on his findings?

Answer: The MARAD employee submitted a joint trip report with the representative of the Agency for International Development covering the Russian ports of Saint Petersburg and Novorossiysk from May 16 to 25, 1993. The following is a brief summary of this report:

Both ports were operating but numerous ships were waiting to be serviced.

Storage facilities for grain at ports ranged from none to very limited. Most grain discharge went directly into cars.

The stated average discharge rate is 5,000 tons per day. The major impediment to grain handling, at that time, was the limitation on the quantity of railcars available.

There are many communication problems.

In both Novorossiysk and St. Petersburg, the reaction to accepting grain in tankers was "Nyet!"

The requirement to provide railcars to service the domestic Russian harvest was predicted to exacerbate the existing railcar shortage for imported grain.

The policy was stated that humanitarian aid shipments would not be given berthing priority over commercial shipments.

Recommendations were made which covered labor, railroads, electronic scales, communications, tankers, charter party provisions, and berthing priority.

A copy of the complete report is attached.

Question 7: Recent allegations have questioned the integrity of MARAD's process for determining fair and reasonable rates. Would you care to comment?

Answer: Any allegations impugning MARAD's integrity in the determination of fair and reasonable rates are unfounded and wholly without merit. The process has been reviewed on numerous occasions and found to meet the requirements of the fair and reasonable regulations as enacted.

Under the fair and reasonable process, MARAD's determinations are made pursuant to the regulations in 46 CFR Parts 382 and 383 and are based on the operating and financial costs on file with MARAD and a profit limited by a current transportation profit index. The Controller General has confirmed that "fair and reasonable" is predicated on costs of U.S.-flag operation. These costs are certified by a company official and subject to a MARAD audit program. The Department of Transportation's Inspector General independently completes the audits.

Background: Regulations: 46 CFR Part 382 - bulk vessels 46 CFR Part 383 - bulk commodities on liner vessels operating statistics - speed, fuel consumption, operating days, deadweight tons, age, and etc. Operating costs - wages, subsistence, stores, M&R, insurance and other. Fuel costs based on consumption and current bunker prices. Capital costs - depreciation, interest, return on equity and return on working capital. Port and cargo costs - wharfage, dockage, tugs, stevedoring, elevator charges, canal tolls, pilots and etc. Brokerage and overhead - 2.5 percent brokerage and 6 percent overhead.

Statement by Christopher Goldthwait
Acting General Sales Manager
U.S. Department of Agriculture
Before the House Committee on Merchant Marine and Fisheries
Subcommittee on Merchant Marine
June 8, 1993

Mr. Chairman, members of the Subcommittee, I am pleased to have this opportunity to appear before you today as Acting General Sales Manager of the U.S. Department of Agriculture to discuss cargo preference and how it applies to programs administered by the U.S. Department of Agriculture.

The Office of the General Sales Manager oversees the U.S. Department of Agriculture's export, food aid and foreign direct technical assistance programs. It is the food aid portion of our programs that are affected by cargo preference that I will be discussing today.

Briefly put, cargo preference requires that most of the agricultural commodities exported under the U.S. food aid programs be carried on U.S. flag ships. Because shipping rates for U.S. flag bulk vessels are almost always higher than the rates charged by foreign flag bulk vessels, cargo preference increases the cost of providing food to people overseas. We are working closely with the Maritime Administration (MARAD) of the Department of Transportation to identify and solve those problems relating to cargo preference that we can jointly resolve. Because of the particular concern surrounding our recent assistance efforts for Russia we have worked even more closely and made considerable progress on several issues. We hope to continue this cooperation.

Legislative Background

U.S. food aid programs include P.L. 480, the Food for Progress program, and donations of commodities owned by USDA's Commodity Credit Corporation (CCC) under the authority of Section 416(b) of the Agricultural Act of 1949. These programs are subject to U.S. cargo preference requirements in accordance with provisions of the Merchant Marine Act, 1936.

As originally implemented, cargo preference required that 50 percent of all food aid shipped under these programs be shipped on U.S. flag vessels. The Food Security Act of 1985 increased this cargo preference requirement from 50 percent up to the current level of 75 percent on food aid shipments under the P.L. 480, Section 416(b), and Food for Progress programs. The 1985 Act specifically identified the export activities that would be subject to cargo preference requirements and clarified that certain others would not. This legislation was of major importance to U.S. Agriculture. It assured that USDA's commercial export programs would not be subject to cargo preference requirements.

The 1985 Act also provided that the costs associated with the additional 25 percent of the volume of commodities shipped on U.S. flag vessels would be paid by MARAD. This is accomplished through an arrangement under which the CCC bills MARAD for its share of the ocean freight differential costs -- the costs resulting from the difference between U.S. and foreign flag shipping rates. MARAD then reimburses CCC for its share of these costs. Provisions of the 1985 Act allow MARAD to sell obligations to the Treasury to raise funds needed to reimburse CCC.

Costs Associated with Cargo Preference

Cargo preference is the law, and USDA complies with cargo preference requirements. These requirements are, however, costly.

First, there are the direct costs of cargo preference. During fiscal 1992, the ocean freight differential cost for USDA and MARAD reimbursement to USDA, as estimated in the President's Budget, was \$168 million. For fiscal 1993, freight differential costs are estimated to be higher, about \$186 million, in part because the differential between U.S. freight rates and foreign flag freight rates has increased and in part because more assistance cargoes are being moved. This \$186 million does not include about \$100 million in freight differential for the \$700 million Russian program.

In addition to the direct increase in costs attributable to cargo preference, cargo preference costs U.S. agriculture in other ways as well. Cargo preference often prevents food aid shipments from following normal commercial practices. Many U.S. flag vessels, such as tankers, are not designed to load bulk grain and are slower to load and discharge than conventional bulk carriers, adding additional costs.

U.S. flag vessels are almost never available in the Great Lakes.

Our market development efforts also suffer as a result of cargo preference. There is often pressure for U.S. flag tankers to carry corn. But the structure of some tankers causes more breakage to occur during loading and discharge than occurs when bulk carriers are used. According to some, this makes the corn less desirable to end users and

more susceptible to insects and mold. For this reason, in a normal commercial transaction, most exporters refuse to ship corn on tankers.

Finally, there are the bureaucratic costs of administering cargo preference requirements. There are personnel, paperwork, and time costs associated with administering these requirements, both for the U.S. government and for the governments of the recipient nations.

These costs notwithstanding, USDA undertakes great efforts to comply with the cargo preference requirements. During fiscal year 1993, approximately 11 million tons of U.S. agricultural commodities will move under the various food aid programs, most of which will move on U.S. flag vessels. This is an increase over the 8 million tons of food aid programmed in fiscal 1992.

As I have said, we are working with our colleagues as MARAD to identify ways to reduce the costs of compliance with the Cargo Preference law. We have identified several points of agreement in this area, such as minimizing lightering, providing for geographic rotation of discharge ports, and encouraging consecutive voyages. We will continue to work together in an effort to achieve lower costs.

Cargo Preference Requirements and Food Aid Programs for Russia

Mr. Chairman, cargo preference was a major obstacle in our efforts to work out details with the Russian side before signing the formal government-to-government agreements to fulfill President Clinton's \$700 million food aid initiative. The Russian side could not understand

the need to devote such a large portion of the \$700 million to freight when a less expensive alternative was available. Nor could they understand the need to make specific commitments to allay the fears of U.S. shippers about delays in cargo discharge.

Indeed, many have advanced these delays as a major reason for increases in U.S. freight bids, but in our view, delays are a small factor affecting freight rates. Foreign flag vessels chartered by commercial exporters allow \$2-3 per ton to cover the risk of delays. There is speculation that Russian port officials have discriminated against U.S. flag vessels. Our agreement with the Russians contains specific guarantees against such discrimination. It should be noted, however, that an examination of the discharge experience for Russian food aid to date shows no significant delays.

Another issue concerns our donational food aid for the former Soviet Union (FSU). Increased ocean freight costs reduce the amount of commodities which can be shipped within existing budgetary resources. In the particular case of Food for Progress programming, CCC funds used to meet the non-commodity costs of the programming (including ocean freight) are limited to \$30 million each year. These budgetary problems have been compounded recently by rapid increases in U.S. flag freight rates. U.S. flag freight rate increases have required USDA twice in recent months to increase its estimates of the shipping costs for food assistance for Russia. As U.S. flag rates increased, the \$30 million limitation was reached more quickly than originally anticipated.

U.S. flag freight rates for grain shipments to Eastern Europe and the former Soviet Union in the last 5 months of 1992 ranged from \$50 to \$79 per metric ton. In 1993, the market has been much tighter and tankers have been used heavily. Tankers have higher costs than dry bulk ships. Thus, rates for vessels actually used have increased to \$60 to \$98 per metric ton. Rates offered by other U.S. flag vessels have been even higher.

Let me reiterate that USDA will continue to comply with cargo preference requirements on this aid package. We have agreed, however, that Russia will be given the opportunity to exclude tankers from carrying corn and soybean meal due to concerns about the quality of products once they have been shipped in tankers. We will continue to work closely with MARAD to manage all shipments to Russia to ensure that fair and reasonable rates are charged for the transportation of this food aid to Russia. And we will continue to work with MARAD to assure that fair and reasonable rates can be maintained. We are certainly open to suggestions about how to minimize costs within current law, as well as more fundamental ways to reduce cargo preference costs.

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United States
Department of
Agriculture

Foreign
Agricultural
Service

Washington, D. C.
20250

July 21, 1993

The Honorable William O. Lipinski
Chairman
Committee on Merchant Marine and Fisheries
Subcommittee on Merchant Marine
Longworth House Office Building
Washington, D.C. 20515-6230

Dear Chairman:

Thank you for your letter regarding the cargo preference hearing on June 8, 1993. As requested in your letter, enclosed are the answers to the list of questions you attached. If I may be of further assistance, please do not hesitate to call me.

Sincerely,

Christopher Goldthwait
Acting General Sales Manager
and Associate Administrator

Enclosure

RUSSIAN PROGRAM

Mr. Lipinski. I understand that as a result of your meetings with MARAD on finding ways to reduce rates for shipments to the Russian Republic a number of changes in chartering arrangements have been proposed, such as priority berthing and greater use of standard commercial terms. Could you tell us specifically what has been proposed and the Russian response to each proposal?

Mr. Goldthwait. We discussed a number of issues with the Russian side during the negotiation of the agreements. In response to our proposal that they provide priority berthing for U.S. flag vessels, they have agreed both to facilitate prompt discharge of all vessels carrying commodities shipped under these agreements and also to ensure that there is no discrimination against U.S.-flag vessels. The Russian side agreed to pay discharge costs for the bulk grain shipments, as in a commercial "free out" contract. Due to the severe shortage of foreign exchange, however, the Russian side requested that they not be liable for demurrage claims by vessel owners. We agreed to this in light of their firm commitment to discharge these vessels promptly. The Russian side also agreed to open letters of credit for payment of the ocean freight costs. They will consider the use of consecutive voyage charters for part of the tonnage in order to obtain the best possible freight rates.

Mr. Lipinski. We are delighted that USDA has been working with the Maritime Administration to improve conditions for U.S.-flag vessels and thereby to reduce program costs. Will this cooperative effort extend beyond the Russian situation and into other areas of concern? What should be the focus of your next efforts to reduce shipping costs?

Mr. Goldthwait. We will continue working with the Maritime Administration on cargo preference issues and problems beyond the Russian program. We at USDA have found these meetings very useful as a method to share information on key issues affecting cargo preference shipments. I believe that our efforts in the future should be directed toward increasing the use of commercial contracting terms wherever possible in order to minimize the costs of complying with the cargo preference law.

Mr. Lipinski. The Russians have previously indicated that U.S. vessels experienced no unusual delays, that discharges were completed in six to eight days. However, testimony today from industry witnesses will cite specific examples of discharges taking much longer than normal. Has USDA asked shipowners for specific data on delays and have you raised these problems with the Russians?

Mr. Goldthwait. We have discussed with the Russian side the importance of discharging vessels carrying these cargoes as quickly as possible. They have agreed to take all appropriate steps to ensure that no delays occur. Bidders will be provided with full information on prior discharges at the ports before the first tender under these agreements to help them prepare their bids. Vessel owners will be asked to inform CCC of cases of undue delay immediately, for follow up through official channels. The Russian side has designated a representative to help resolve any delays.

As of this hearing, we have not seen undue discharge delays for countries of the Former Soviet Union. There have been some instances of delay which were traceable to the actions of the ocean carrier itself. For example, the LIBERTY STAR, which carried corn to Belarus, arrived at the load port nine days after the end of the scheduled load period. This caused it to arrive in Novotolinn later than planned. Even so, the port began to discharge the vessel about a week after it arrived. Another U.S.-flag vessel, the CHESTNUT HILL, contracted to carry wheat to the port of Novotolinn, but apparently failed to make the necessary reservation at the port. USDA and other U.S. Government agencies worked extensively with the Russians, whose cargo it was, and the vessel was permitted to discharge at St. Petersburg instead. I understand that MARAD is working closely with all U.S.-flag owners to insure they are aware of the procedures to be used when transporting cargo to these ports.

Mr. Lipinski. What mechanism does USDA have in place to ensure that the Russian authorities discharge American vessels quickly and efficiently? Will USDA have personnel in Russian ports on a regular basis? How much authority will they have?

Mr. Goldthwait. Our agreement with the Russians contains specific guarantees against discrimination against U.S.-flag vessels. The Russians have named an official liaison to resolve any case of undue delay. Due to budget constraints we will not be able to place personnel in the Russian ports on a full-time basis, but we plan several trips to the ports by transportation specialists from USDA, MARAD, and other agencies during the next few months.

Mr. Lipinski. If the Russian republic has refused to reduce any of the uncertainties associated with loading and unloading cargoes, is there any other approach that could be considered to reduce these uncertainties? Could a separate account be established for demurrage and despatch?

Mr. Goldthwait. In fact, the Russian side has guaranteed to facilitate the rapid discharge of the vessels used to carry commodities under these agreements. Many of the details remain to be worked out as the programs are implemented. It would not be feasible to establish a separate account for demurrage and despatch, since the U.S. Government is not a party to the freight contract and therefore demurrage costs, if any, must be borne by the importing country.

Mr. Lipinski. Has there been any consideration of consecutive voyage charters or time chartering of vessels as a way to reduce transportation costs? I understand this approach has been used successfully by Egypt to reduce its U.S.-flag transportation costs.

Mr. Goldthwait. We are looking at both consecutive voyage charters and time chartering of vessels as ways to reduce transportation costs.

Mr. Lipinski. Are there any other management improvements that USDA and MARAD could address that might help reduce costs for U.S. vessel owners and reduce shipping rates for your programs?

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Mr. Goldthwait. We will continue to work with MARAD on ways to reduce the costs of meeting the requirements of the current cargo preference laws. We would be happy to assist in any way possible should more fundamental changes to cargo preference be considered, such as the shift to a direct subsidy to support the U.S.-flag merchant marine.

Mr. Lipinski. Will American operators be able to contact USDA directly when problems arise?

Mr. Goldthwait. Yes, we encourage operators of U.S.-flag vessels to contact us if problems arise.

Mr. Lipinski. American operators have complained that USDA approves charter parties requiring the American operator to arrange inland transportation from the port, which is often in one republic, to the border of the recipient republic. If the cargo does not reach the border, the American operator is responsible. Given the corruption, inefficiency, and chaos in Russia and the other former Soviet republics, is it fair to American operators to be responsible for inland transportation?

Mr. Goldthwait. The primary objective of our food aid programs is to provide commodities to the countries which need them. Most food aid recipient countries have difficulties generating foreign exchange, making it impossible for the country to pay port charges or inland carriers in other countries. In such cases, we have found that the most effective way to transport the commodities is to link the ocean and inland movements in this way. Using this "through bill of lading" procedure is common in commercial transactions, especially for landlocked countries.

Mr. Lipinski. Mr. Shapiro states in his written testimony that one of Liberty's vessels, the Liberty Wave, while transporting food aid cargo, sat for 11 days in Baltimore while the grain supplier loaded a foreign-flag vessel that arrived in the port after the Wave. Why would a grain supplier give priority to a foreign-flag vessel over a U.S.-flag vessel? Isn't the general rule "first-come, first-loaded?"

Mr. Goldthwait. Two vessels arrived to load corn at the Baltimore grain elevator on January 9 and 12. The elevator began loading corn to the first vessel and continued doing so to the second vessel. The Liberty Wave arrived January 12, but was to load wheat. In order to make the most efficient use of the loading facility, the elevator completed loading corn to the second vessel before changing over to load wheat. This is a standard commercial practice.

Mr. Lipinski. Is it true that the delivered price of American grain is sometimes more expensive than the delivered price of European grain? When we provide food aid to foreign countries, do we always provide American grain, even when it is more expensive?

Mr. Goldthwait. Owing to European grain subsidies, the delivered price of American grain can be more expensive than the delivered price of European grain. The goals of U.S. food aid programs are to provide humanitarian

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assistance to recipient countries as well as to provide market development assistance to U.S. farmers. In order to achieve these aims, the U.S. Government offers only U.S. commodities under our food donation and concessional sales programs.

FAS/EC/7/20/93

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SUBCOMMITTEE

STATEMENT FOR THE RECORD
WALLACE T. SANSONE
VICE COMMANDER
MILITARY SEALIFT COMMAND
BEFORE THE
MERCHANT MARINE SUBCOMMITTEE
OF THE
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE
8 JUNE 1993

NOT FOR PUBLICATION
UNTIL RELEASED BY THE
HOUSE MERCHANT MARINE
SUBCOMMITTEE

WALLACE T. SANSONE
VICE COMMANDER, MILITARY SEALIFT COMMAND

Wallace T. Sansone is the Vice Commander for the Military Sealift Command. As Vice Commander, Mr. Sansone is the senior executive in the worldwide Navy Command headed by Vice Admiral Michael P. Kalleres. He is the principal assistant and advisor to the Commander, for providing strategic sealift to deploy and sustain military forces worldwide in support of the National Security objectives. Currently, MSC employs approximately 9,000 people, operates 135 ships, and has an operating budget of more than \$2 billion annually.

Prior to his appointment with MSC in 1982, Mr. Sansone was the Associate Administrator, Maritime Administration in the Department of Transportation. As Associate Administrator he was responsible for the development and administration of subsidy to aid in the financing and operation of U.S. flag vessels. In addition to his activities related to subsidy administration, Mr. Sansone has participated in NATO international shipping discussions, as well as in the U.S. bilateral maritime negotiations with the Soviet Union and the Peoples Republic of China.

From 1960 to 1968, he served as a deck officer in the U.S. Merchant Marine and in various shoreside management positions engaged in international business.

Mr. Sansone, a member of the Senior Executive Service since 1975, holds its highest honors, the Presidential Rank Awards as Distinguished and Meritorious Executive, as well as other high level Senior Executive Awards from the Departments of Defense, Transportation and Commerce. He graduated from the State University of New York Maritime College with a Bachelor of Science degree and from New York University with a Master of Business Administration. He holds the rank of Captain in the United States Naval Reserve (Retired).

Mr. Sansone is married to the former Harriet French of Baltimore, Maryland, and resides in McLean, Virginia with their two children, Michelle and Brian.

INTRODUCTION

Good afternoon Mr. Chairman and Members of the Subcommittee. My name is Wally Sansone and I am the Vice Commander of the Military Sealift Command. The Department of the Navy's Military Sealift Command (MSC), as the Naval Component Command of the United States Transportation Command, is responsible for providing intermodal ocean transportation to all Department of Defense components. MSC is also a Naval Type Commander for various Naval Fleet Auxiliary and Special Mission ships.

It is a pleasure to have the opportunity to appear before you today to discuss the issue of Cargo Preference as it applies to cargoes for which ocean transportation has been arranged by the Military Sealift Command.

In carrying out its mission, MSC contracts for the annual movement of approximately 10 million measurement tons of dry cargo and 8 million long tons of liquid cargo on U.S. flag ships. During the last year about 95 percent of all DoD cargo was carried on U.S. flag ships.

CARGO PREFERENCE ACT OF 1904

The Military Transportation Act of 1904, commonly referred to as the 1904 Cargo Preference Act, is the primary cargo preference law which affects the ocean transportation of Defense Department cargo. The 1904 Act provides that only ships of the U.S. (i.e., documented under U.S. law) or belonging to the U.S., may be used for the ocean transportation of supplies bought for the military. This includes things such as construction materials to be used to build DoD facilities and component parts of end items to be purchased by DoD.

When the 1904 Act was passed, the Congress recognized that requiring the military to exclusively use U.S. flag ships could have the unintended effect of increasing the rates charged by those ships beyond a reasonable level. Thus, the Congressional debates centered almost exclusively on ensuring that DoD would not have to pay unreasonable rates to ship military cargo, and would have a way of protecting itself against exorbitant rates. Thus, the 1904 law contains two provisions specifically intended to protect DoD:

- (1) U.S. flag ships need not be used by DoD if the President (now delegated to Secretary of the Navy)

finds the rates charged by those ships to be excessive; and

(2) The freight rates charged to DoD by U.S. flag ships cannot be more than those ships charge private persons for transporting like goods.

MSC carries out its peacetime transportation mission at a cost of more than one billion dollars annually. For the majority of the more than 10 million tons of dry cargo needed by U.S. forces worldwide, MSC awards contracts for transportation on regularly scheduled commercial ocean carriers, primarily containerships. MSC also arranges for the movement of more than 8 million long tons of petroleum products annually. In addition, MSC charters about 35 U.S. flag dry cargo ships and tankers to deliver cargo to areas where no commercial liner service exists or when it is not feasible to use commercial containerships such as in the transportation of tanks and munitions.

Beyond our support of the U.S. flag merchant marine through the 1904 Cargo Preference Act, DoD pays a premium for liner cargo as part of our commitment to maintain a mobilization base of U.S. flag ships which could be needed by DoD in a crisis or

contingency. This is accomplished by setting a cargo distribution system which assures that there are at least two U.S. flag carriers which transport DoD cargo on certain major routes.

From year to year DoD ocean rates fluctuate in relation to market forces, primarily the level of competition and exports. In accordance with the Federal Acquisition Regulation, MSC competitively solicits offers from all U.S. flag operators for the ocean transportation of DoD cargo. Contract award decisions are made after evaluating the levels of service and other details of each offer, and after comparing the prices proposed and the prices for equivalent U.S. flag service paid by commercial companies.

Beyond the 1904 Cargo Preference Act, there are other statutes which affect DoD decisions concerning whether to grant a preference to U.S. flag ships. On 30 September 1992, David Addington, then General Counsel of the Department of Defense, testified before this subcommittee and addressed some of those statutes. In all cases MSC relies on the DoD General Counsel for guidance on interpretation of the provisions of the law. I have summarized below the points he made:

DOD HUMANITARIAN ASSISTANCE PROGRAM

Before I continue, I would like to place these cargoes in context. The entire volume of non-DoD cargo that is lifted by MSC is less than one percent of the total cargo we ship annually. On behalf of DoD, the Military Sealift Command is authorized to arrange ocean transportation of DoD Humanitarian Assistance Program cargoes pursuant to Section 301 (a)(17) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190). Section 304 (d) of the Act provided for the transportation of Humanitarian Assistance Program cargo by "the most economical commercial or military means available" unless otherwise determined by the Secretary of State. Based on that statutory language, the General Counsel of the Department of Defense stated his legal opinion that these cargoes were not subject to the Cargo Preference Act of 1954, which generally requires that the ocean transportation of one-half of the cargo contracted for, or otherwise financed by the Government, be accomplished on privately owned U.S. flag vessels. As noted below, this situation has changed as a result of subsequent legislation. When it has been determined that cargo preference laws apply, such U.S. flag preference is included in the requests for proposals. When it is determined that cargo preference does not apply, bids are still solicited from, and

contracts may be awarded to, U.S. flag vessels. However, in these cases, use of foreign flag vessels is permitted and U.S. flag ships compete on an equal basis.

DOD TRANSPORTATION OF HUMANITARIAN ASSISTANCE TO THE
COMMONWEALTH OF INDEPENDENT STATES

Section 109 of the Dire Emergency Supplemental Appropriations Act of 1992 (Public Law 102-229) authorized the President to transfer \$100 million in Fiscal Year 1992 DoD appropriations to appropriate DoD accounts in order to transport, by military or commercial means, food, medical supplies and other types of humanitarian assistance to the former Soviet Union.

The statute provides that the Secretary of Defense may use the \$100 million for the transportation of the cargo "notwithstanding any other provision of law... ." It was determined by the General Counsel of the Department of Defense that such language in the statute authorized the Government to arrange for the ocean transportation of such cargo free of all restrictions in other laws, such as the 50 percent U.S. flag preference in the Cargo Preference Act of 1954, which otherwise would apply. Pursuant to that determination, cargo has been transported to the former Soviet Union without regard to the

Cargo Preference Act of 1954.

TRANSPORTATION OF CONVENTIONAL FORCES IN EUROPE TREATY CARGO

MSC has not been responsible for arranging for the movement of cargoes being transported under the Conventional Forces in Europe Treaty (CFE) Implementation Act (Public Law 102-228). Transportation of CFE equipment is being arranged by the NATO supply and logistics organization, as authorized by the law.

CARGO PREFERENCE OBLIGATIONS UNDER TITLE 10 U.S.C. SECTION 2551

Subsequent to Mr. Addington's appearance before this subcommittee, the FY 1993 Department of Defense Appropriations Act (Public Law 102-396) was enacted. That Act provides funds for the transportation of humanitarian relief for the people of Afghanistan and Cambodia, and for worldwide humanitarian relief. Also enacted after Mr. Addington's appearance was the FY 93 National Defense Authorization Act (Public Law 102-484) which rewrites Title 10 U.S.C. section 2551. Subsection (c) 2 of that statute permits transportation of humanitarian relief "by the most economical commercial or military means available" unless the Secretary of State determines that it is in the national interest to do otherwise. As noted above, Mr. Addington

construed this language as exempting humanitarian assistance cargoes from the Cargo Preference Laws. However, subsection (c) 3 of that statute now provides that nothing in subsection (c) shall be construed as waiving the requirements of the Cargo Preference Acts of 1904 and 1954. In consequence, the exemption identified by Mr. Addington regarding ocean transportation by the most economical commercial or military means has been removed.

CLOSING REMARKS

Mr. Chairman, in closing, I would like to make the following point. In complying with the 1904 Cargo Preference Act, which requires all DoD cargo to be transported on U.S. flag ships, we believe that DoD provides substantial benefits to the U.S. maritime industry. Approximately 95 percent of the almost 20 million tons of peacetime cargo shipped annually by the Military Sealift Command for the Department of Defense moves on privately owned U.S. flag ships. More than one billion dollars is paid annually to the U.S. maritime industry to transport DoD cargoes and maintain sealift readiness. DoD remains committed to the faithful execution of all the Cargo Preference Acts to achieve the important objective of strengthening the U.S. flag merchant marine.

Mr. Chairman, that concludes my prepared statement. Again, I thank you for the opportunity to appear before your committee today.

STATEMENT OF PHILIP J. SHAPIRO, ESQUIRE
PRESIDENT AND CHIEF EXECUTIVE OFFICER
LIBERTY MARITIME CORPORATION

BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

JUNE 8, 1993

STATEMENT OF PHILIP J. SHAPIRO, ESQUIRE
PRESIDENT AND CHIEF EXECUTIVE OFFICER
LIBERTY MARITIME CORPORATION

BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

June 8, 1993

Mr. Chairman, my name is Philip Shapiro. I am the President and Chief Executive Officer of Liberty Maritime Corporation, the largest independent operator of U.S.-flag dry bulk vessels. Liberty operates six vessels, including five 64,000 deadweight ton dry bulk carriers and one tanker. Liberty's vessels, which are among the most modern and efficient in the U.S.-flag dry bulk fleet, are primarily engaged in the U.S. preference trades, although its vessels also compete in the foreign commercial markets around the world. Liberty's vessels routinely transport food aid shipments to Russia and other ex-Soviet republics, with the LIBERTY STAR having just completed the discharge in Estonia of a cargo destined for Belarus only nine days ago.

I welcome the opportunity to discuss the ocean transportation aspects of the Russian food aid program. I know I speak for the entire American-flag bulk industry when I say that we support and appreciate President Clinton's decision to retain cargo preference with respect to the pending Russian aid program. As you know, cargo preference has received a great deal of attention in the press over

the last few months. Unfortunately, much of the information imparted has been inaccurate or wrong. I appreciate the opportunity to correct the record today.

**American-Flag and Foreign-Flag Rates
Have Risen In Response to Market Pressures**

Possibly the greatest distortion that has appeared in news accounts is that American-flag vessel owners increased their rates in response to the news that there would be a Russian aid program. Nothing could be further from the truth. American-flag rates, like foreign flag rates, are determined by the market and I can assure you from personal experience that the competition among American-flag owners for food aid cargoes is fierce.

The reality is that American-flag rates and foreign-flag rates rose in the spring in response to market pressures. In January, for example, a Cypriot flag vessel transported 51,000 metric tons of corn to Poland under the Food for Progress program for \$16.75 per metric ton. The commercial rates quoted at the time for shipments to the former Soviet Union were comparable. By early April, three foreign-flag vessels registered in Malta, Panama and Cyprus transported 27,000, 26,500 and 56,500 metric tons of corn to Russia for \$37.75, \$37.75 and \$25.50 per metric ton, respectively, a weighted average of \$31.45 per metric ton -- almost exactly double the January rate. In fact, with respect to recent tenders for Kyrgyzstan and Armenia, some of the foreign-flag bids exceeded some of the American-flag bids.

What is particularly frustrating for American-flag operators is that despite these facts, critics continue to quote bids as if they were fixed rates. I refer to the so-called \$138 bid in particular, which has been quoted over and over as if it were representative of American-flag rates. The \$138 figure is no more an indication of American-flag rates than the Dow Jones Average. The \$138 was the highest, not the lowest bid. In other words, the \$138 bid was a non-event.

What has also been frustrating is to see in news accounts stories that the fair and reasonable rate methodology employed by MarAd is a sham. Mr. Chairman, all a reasonable person has to do is review the docket leading up to the adoption of the fair and reasonable rule. That process lasted four years and contained three MarAd proposals and hundreds of pages of comments. In the end, the Office of Management and Budget played a commanding role in insisting that the methodology be written in the form it is today.

Moreover, the rule requires the submission of extensive and very sensitive cost information to the government by each operator. Annual and voyage information must be provided. Everything is covered. And -- as an extra precaution -- the Inspector General of the Department of Transportation audits everything.

Now I am not here to defend the fair and reasonable methodology. In fact, we are on the record requesting modification of the methodology. Nevertheless, I do not believe that anyone can reasonably argue that it is a system without integrity. It is a rigorous methodology and it is vigorously enforced.

**American Flag-Owners Continue to Face
Problems in the Former Soviet Union**

Having discussed the general rate situation, I would like now to turn to the problems American-flag owners continue to face in the former Soviet Union that add unnecessarily to American-flag rates. Let me give as an example the recent experience of the LIBERTY STAR.

The LIBERTY STAR was chartered on March 17 to transport a 57,500 metric ton cargo of corn to Belarus via Estonia pursuant to the Food for Progress program. As with many cargoes to the inland republics of the former Soviet Union, the cargo was to be delivered to Talinn, Estonia and then overland to Belarus, because Belarus has no ocean ports. Unlike most of the other shipments to the former Soviet Union, this cargo was chartered on the basis of terms similar to what prevails in commercial practice -- hence, our very competitive rate of \$41.63 per metric ton, only a few dollars more than a competitive foreign-flag rate.

Prior to being loaded on or about April 15, we learned that Belarus had not made any arrangements with the Estonian port authorities to store or tranship the cargo. Indeed, the Estonian port authorities informed us that the Belarussians had not made discharging arrangements for the LIBERTY STAR. We communicated this to Belarus' U.S. purchasing agent and requested that Belarus cancel or delay the shipment. Unfortunately, Belarus' agent ordered us to load the cargo and proceed to Talinn anyway.

On May 4, the LIBERTY STAR arrived in Talinn as required by its charter. Indeed, the Estonian port authorities informed us that they would not be able to commence discharging the vessel until late May or early June, a potential delay of 40 to 50 days. To make matters worse, the government of Belarus refused to accept the LIBERTY STAR's Notice of Readiness after the vessel arrived in Talinn. In effect, the government of Belarus refused to commence the time period (known as lay days) for the calculation of liquidated damages or demurrage. In other words, our vessel would sit and wait in Talinn without any compensation for delay -- even though we had fully met our obligations.

Finding the delay unacceptable, we immediately contacted the U.S. government and the governments of Estonia and Belarus to break the logjam. We received considerable support from MarAd and from concerned persons on Capitol Hill. Quite frankly, the initial response from the U.S. Department of Agriculture was that our predicament in Estonia was a "commercial matter." Having heard that many times before, I cannot say that we were surprised. Prompted by Congressional prodding, however, USDA did eventually weigh in. Together with help from MarAd and people on Capitol Hill, we managed to speed the berthing process and get the vessel discharged by June 1 for a total delay of 28 days.

The LIBERTY STAR case is illustrative of the problems faced by American operators even when the charter party terms are favorable or are nearly commercial, as was the case with the Belarus charter. American operators have very little in the way of remedies even under such charters. If the charterer

chooses to ignore the charter, as Belarus did by refusing to accept the Notice of Readiness, the only practical remedy is to engage the U.S. government for assistance. Unfortunately, the government agency with the most leverage with the recipient countries -- either USDA or AID -- has often been reluctant to intervene. The result is that the American owner has to spend considerable management time and resources to limit the losses resulting from discharging delays, as occurred with the LIBERTY STAR. Even after expending such time and resources, the end result is often a considerable and very costly delay.

There are, of course, other problems associated with the transportation of food aid that have also manifested themselves in the shipment of aid to the former Soviet Union. I'll review them in summary fashion.

Inefficient Procurement. U.S. government shipper agencies lack standardized systems for procuring transportation services. Charter party terms are inconsistent and vary from republic to republic and even from voyage to voyage.

Bunched Cargoes. Even though the Russian and other ex-Soviet aid programs are clearly long-term, it appears that the U.S. government is trying to ship all the cargo at once to already overburdened ports -- rather than spreading the cargoes out over the year. This maximizes rather than minimizes ocean transportation costs because American-flag operators must factor in the high cost of delay in overburdened ports into their freight rate.

One-shot Cargoes. The U.S. government, in contrast to commercial practice, has traditionally solicited bids for food aid cargoes, including those destined to the former Soviet Union, on a one-shot, single voyage basis. As a result, operators must factor into their bid the possibility that their vessels may have down time between voyages with a corresponding increase in costs. We have argued for years that the government should adopt a system of consecutive voyage charters. Israel, for example, under its Side Letter arrangement with the United States whereby it annually ships 800,000 tons of grain in U.S.-flag vessels, has achieved considerable efficiencies through consecutive voyage charters.

Slow Loads. Disputes between shipper agencies and the commodity supplier and shipper agency accommodation of supplier convenience routinely result in slow loads at otherwise efficient U.S. ports. For example, the LIBERTY WAVE sat for five days in Albany, New York, while USDA and the supplier, Cargill, bickered over grain quality and 11 days in Baltimore while the elevator gave priority to a later-arriving foreign-flag vessel.

Another cause of slow loads is U.S. government's refusal to follow standard commercial practice concerning what is known as "nomination of lay days." In the commercial world, the charterer names a 30-day load period and the operator chooses a ten-day period within that time to make the vessel available for loading at which time the charterer is obligated to have the cargo ready and to load the vessel. The U.S. government, in contrast, has required the operator to be available for a 30-day period and has allowed the charterer to name a 10-day period within

that 30-day period when the cargo will actually be loaded. As a result, a vessel may be required to wait almost 30 days before commencing loading. The LIBERTY BELLE, for example, recently sat waiting for almost a month before the charterer loaded the vessel. One does not need to be a shipping expert to see that operators will raise their rates when faced with long loading delays.

Feuding Republics. Food aid shipments to ex-Soviet republics often involve discharge in a neighboring republic which may or may not have good relations with the recipient republic when the vessel arrives. The LIBERTY STAR situation is illustrative of this predicament.

Clogged Russian Ports. The shipment of a large amount of agricultural assistance from all countries is worsening an already chaotic Russian port and inland transportation system. Port delays harm American-flag operators with higher daily operating costs more than low-cost foreign-flag operators and thus geometrically increase the differential. Simply put, a foreign-flag operator with a used, low-cost vessel manned by a third-world crew can more easily afford to wait out a delay than American-flag operators who must run on a much tighter schedule.

Berth Terms versus Free In/Free Out. Foreign-flag vessels almost always load and discharge on a "free in" and "free out" basis, *i.e.*, the recipient country is responsible for arranging cargo loading and unloading, whereas American-flag vessels mostly load and discharge on a "berth terms" basis, *i.e.*, the operator is responsible for arranging cargo loading and unloading. Berth terms give

stevedoring companies, storage facilities and other privatized entities in the former Soviet Union every incentive to gouge American-flag operators.

While we note with regret that USDA did not obtain Russian agreement to "free out" unloading, more and more USDA-approved charter parties to ex-Soviet republics are fortunately "free out." However, the benefits of free out are often outweighed by disadvantageous and non-commercial charter terms. One of the most blatant is a requirement that the vessel arrive at a berth, rather than at an anchorage, before the charterer's obligation to compensate the operator for delay is triggered (the port authority makes the berthing decisions). So by refusing to allow the vessel to berth, the port imposes the costs of delay upon the vessel just as if berth terms were applicable. Another anti-operator term permits the charterer to take its time discharging the vessel -- as low as 1,000 tons per day for a 50,000 ton cargo -- before compensation for delay is triggered.

"No Demurrage" Provisions. Most commercial charter parties require the charterer, *i.e.*, the recipient country, to compensate the vessel operator with liquidated damages or "demurrage" for loading and unloading delays. Demurrage is usually an amount high enough to give the charterer an incentive to be efficient but not so high as to give an operator an incentive to delay. USDA-approved charter parties for American-flag vessels (but often not foreign-flag vessels) often have a "no demurrage" provision, thereby giving the recipient country every incentive to give berthing priority to later-arriving "on demurrage" vessels -- while American-flag vessels sit and wait.

Lightering Requirements. USDA-approved charter parties for the former Soviet Union to date have had size restrictions requiring larger, more efficient American-flag vessels to "lighter" cargoes into smaller vessels once they arrive at the discharge port. At these ports, rates are negotiated upon arrival. Charter hire for lighter vessels in Russian ports have shot up from \$2,000-\$3,000 per day to \$18,000 per day because of huge demand and discharge delays encountered even by the lightering companies. Between April 6 and April 16, lightering costs in St. Petersburg shot up from \$20 to \$40 per metric ton.

In Novorossiysk, larger American-flag vessels are subject to a lightering requirement, which usually disappears upon the vessel's arrival and the payment of additional "fees" because the port actually has several larger, deeper draft berths available.

Stevedoring. Privatized Russian entities often walk away from previously negotiated stevedoring contracts and demand huge increases -- from \$2 to \$14 per ton in hard currency only.

Inland Transportation. A number of the tenders for the transportation of food aid to the former Soviet Union, such as the March 1993 U.S. government-approved tender for Kyrgyzstan, have required American-flag operators to arrange and pay for inland rail transportation through neighboring republics to the border of the recipient country. This puts a huge risk factor on all operators which must factor into the rate calculation the risk of instability and sudden cost increases.

Fumigation. U.S. government-approved charter parties require American-flag operators to pay for fumigation, even if the vessel passed strict USDA inspection and the cargo was the source of infestation. In commercial practice, the charterer and the commodity supplier are responsible for fumigation.

Payment Delays. In commercial practice, payment is due on delivery whereas with food aid payment is due, assuming no dispute (real or imagined), 45 days or more after delivery -- adding \$50,000 in interest costs.

Foreign Corrupt Practices Act. Even when foreign-flag vessels are subject to the same onerous USDA-approved charter party terms as American-flag vessels, foreign-flag operators can avoid their effect by negotiating side deals with Russia's so-called entrepreneurs. Because of the FCPA and other U.S. laws and regulations, American-flag operators lack this "flexibility." USDA is rarely any help in this regard, claiming that such problems are a "commercial matter" -- even though it is USDA which has leverage over the Russians because of its position as supplier as well as the ultimate decision-maker with respect to charter party terms.

**Agencies Need to Cooperate to Improve the
Efficiency of Food Aid Transportation**

What needs to happen -- and we believe that MarAd and USDA have already taken steps in the right direction -- is for the shipper agencies to cooperate on solutions to improve the efficiency of food aid transportation. Bulk vessel operators make a "fixed price" bid months before the scheduled shipment, reflecting their assessment of the probable situation in the load and discharge ports. Where operators can expect quick and efficient loads and discharges, American-flag operators offer rates generally competitive with "flag-of-convenience" operators. The use of commercial charter terms, priority berthing in government-to-government food aid agreements and hard-nosed political pressure will go a long way to ensuring quick loads and discharges, which are the keys for reducing the ocean freight differential between American-flag and foreign-flag operators. Where chaos is the rule, as is the case with Russia, higher rates are inevitable.

While we are not entirely satisfied with the results of the recent negotiations concerning Russian aid, we are hopeful that the new spirit of cooperation between USDA and MarAd will help alleviate some of the problems faced by American vessel operators. We look forward to working with Secretaries Peña, Espy and Christopher, as well as incoming Maritime Administrator Herberger, Acting Maritime Administrator Yim and other members of the Administration, to ensure that American food aid reaches Russia efficiently and economically in accordance

with the cargo preference laws. We also look forward to working with the agricultural community in support of President Clinton's Russian aid package, including the provision of food aid subject to both buy-American and ship-American requirements.

I appreciate the opportunity to discuss the ocean transportation aspects of the Russian food aid program. I would be pleased to answer any of your questions.

TESTIMONY OF
GEORGE W. VLANDIS
SENIOR VICE PRESIDENT, CHARTERING
OMI CORP.

Before the
House Committee on Merchant Marine and Fisheries
Subcommittee on Merchant Marine

June 8, 1993

Good afternoon, Mr. Chairman. My name is George W. Vlandis. I am Senior Vice President, Chartering, OMI Corp. OMI is the second largest independent bulk operator in the United States. It is a pleasure to have been invited to testify this morning.

OMI has participated in the cargo preference program for many years. We are currently heavily involved in shipments of food aid to the former Soviet Union. Seven of our U.S.-flag vessels have completed or are currently in the midst of voyages to former Soviet Republics.

OMI has developed considerable expertise in providing service to the cargo preference market. The cargo preference market is often a difficult one because shipments are being sent to recipient countries that often do not have sophisticated port facilities. But nothing in our experience has been quite as challenging as the recent shipments for the former Soviet Union.

Many of the problems faced by vessels owners in transporting grain to the former Soviet Union result from the terms incorporated in CIS charter parties that are contrary to standard commercial practices. The more variation that is permitted from standard commercial practices, the more uncertainty the vessel owner must face. The more uncertainty the vessel owner must face, the more rates will increase to reflect these uncertainties.

Vessel owners have been working with the Maritime Administration and with the U.S. Department of Agriculture to address some of the problems that have resulted in higher rates for shipments to the former Soviet Union. We understand that USDA proposed several changes in the charter terms governing future shipments to the Russian Republic, but that these changes in terms were not accepted. In particular, the Russian Republic insisted that vessel owners remain responsible for loading and discharging costs, rather than to operate under normal bulk commercial terms called "free out" where the vessel owner is not responsible for those costs. While we are disappointed that the USDA-proposed changes were not accepted, we are appreciative of the efforts undertaken on behalf of the industry by both the Maritime Administration and USDA. We hope that the agreement between the United States and Russian Governments will provide a reasonable means to deal with the frustrations of U.S. shipowners. In addition, we hope it will make the Russians aware of the difficulties we face, since there seems to be massive denial of our problems. It is our understanding that during the recent negotiations the Russians asserted there had been no delays in unloading cargoes destined for Russia. They alleged all U.S. vessels had been unloaded in 6-8 days. This is not correct.

OMI recently completed discharge of a shipment of wheat to St. Petersburg. The wheat was being shipped to the Russian Republic. While the vessel was able to berth relatively quickly, the lack of sufficient rail cars to take the grain significantly slowed discharge of the vessel. At the time of bidding on the tenders, OMI had been given a discharge rate of 3,000 tons per day which would result in an expected discharge of 12 days. Instead, discharge took 23 days because of the lack of adequate storage at the port and the reliance on delayed rail cars to take the grain to its destination.

OMI's other six voyages were to Odessa, with grain bound for Moldova and the Ukraine. While these shipments were not specifically for the Republic of Russia, the problems we encountered mandated caution in bidding on the transportation of cargoes to any port in the former Soviet Union.

Three OMI vessels discharging cargo in Odessa for Moldova were in port in Odessa from 17 to 25 days. Most of the delays were a result of delays in rail cars. Ownership of the rail cars and payment for rail car services are still a subject of debate among the republics. While they debate, vessel owners wait.

Of the three shipments to the Ukraine, port congestion created significant delays. One OMI vessel waited 14 days just to berth, and the other two waited 10 days to berth.

Other factors play a role here as well. On one voyage, we learned mid-ocean that the stevedoring rates that were quoted to us when we submitted our bid for the shipment had suddenly increased by 33%, and various other additional labor charges would now be applicable to our discharge. OMI does not have the ability to say that

we will not pay these additional costs. The vessel owner is a captive market for various interests in these ports.

Vessel owners cannot bid on the basis of faith, hope, and verbal assurances. They must bid on the basis of relevant experience because it is the vessel owner, not the United States government, that is being asked to bear all of the risks of delay, as well as loading and discharge problems. Being wrong by even a day on your expectation of the time a vessel will spend in port can cost the vessel owner more than \$30,000. Being delayed a number of days can wipe out any profit the vessel owner expected to earn.

Despite the significant difficulties, some anticipated and some not anticipated, OMI, aware of the competitive situation for this cargo, has had to, and indeed, has, bid competitively and responsibly on shipments into Russia and CIS countries. On our first two voyages to Moldova via Odessa, OMI's bid for the ocean portion of the transportation was below \$60 per ton and on the third it was only slightly higher due to a lower volume of tonnage on the movement. Our inland rates were substantially lower than the foreign-flag competition. And the comparable differentials on those movements were under \$25 a ton. On our three movements of corn to the Ukraine through Odessa our bids were less than \$56 per ton, free out. On every one of those voyages we encountered significant delays in loading time, the first three being full berth terms, the second three being free out but without demurrage. Another vessel we had to Russian recently completed a voyage to St. Petersburg. The vessel was on full berth terms, and as I mentioned earlier took 23 days to discharge its cargo. OMI's bid for the transportation was less than \$65 a ton.

None of these voyages has been excessively profitable. In fact none of these voyages has paid the fully allocated costs of the vessel. We just do not believe that general allegations of rate gouging are justified, nor do we believe that recent rate experiences justify calls to eliminate cargo preference.

The rates we have been awarded for our tankers have not adversely affected the programs. These rates have been highly competitive with bulk carriers. The tankers also make the market for U.S.-flag vessels much more competitive.

Although I do not wish to make this a principal focus of my testimony, I would like to talk for a moment about the utilization of tankers to carry preference cargo. OMI has had 7 tanker movements to the former CIS countries. Each of these has been a handy size tanker able to berth without lightening. It has been our experience that these vessels have been able to load and unload without problems due to their configuration. The only problems encountered have been due to lack of rail cars available to unload the vessels, or to the delays getting to the berth. Virtually all the cargo has arrived without claims for damage, and our sampling indicates that any damage to the cargo, including corn, has been within acceptable limits. In fact, our technical analysis indicates that tankers are, under some circumstances, actually less damaging to commodities than certain bulkers.

Despite the fact that OMI has successfully carried grain, including feed corn, to many countries, including the Soviet Union, in our tankers for many years, USDA has ruled that it will not accept tenders for transportation of the 1992 corn crop to Russia in tankers. We believe this position is unjustified. A fair minded factual analysis shows that it is technically possible. The real reason for the USDA decision is to enable

Russia to lower the percentage of cargo subject to preference from the statutory 75% down to less than 20%. Over 60% of the tonnage to Russia in the current program will be corn. Tankers must be the predominant mode of transportation, as most of the fleet is already occupied. We are asking that this Committee help us in securing real compliance with the cargo preference laws through USDA reconsideration of its decision to ban tankers from the carriage of corn.

We believe that the utilization of tankers to carry preference cargo in the current market is completely consistent with the Merchant Marine Act, and should be encouraged. All of our tankers have served as military auxiliary, and many saw service during Desert Storm and Desert Shield. The cargo preference market can and has provided an important balance that enables tankers to stay American-flag during periods of slow liquid bulk activity. The cargo preference program therefore encourages a larger fleet of handy size tankers than would be available if these vessels were excluded from the grain preference trade.

The cargo preference market is a vital source of business to the U.S. merchant marine. OMI and other vessel owners are more than willing to work with the federal government to keep the cost of the program at the most defensible level. As a result of the debate on the cost of shipments of grain to the former Soviet Union, we hope that there has been an increase in understanding of the factors that affect our rates. We all want the program to succeed. It is vital not only to our industry, but to the U.S. agricultural industry and to our nation's foreign policy objectives.

Bulk owners look forward to continuing to work with the Maritime Administration and the USDA to increase whatever efficiencies in the program are possible.

I appreciate the opportunity to testify this afternoon and I would be happy to answer any questions you may have.



North American Export Grain
Association Incorporated

PREPARED STATEMENT OF STEVEN A. MCCOY
PRESIDENT
NORTH AMERICAN EXPORT GRAIN ASSOCIATION

before the
MERCHANT MARINE SUBCOMMITTEE
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

June 8, 1993

Introduction

Mr. Chairman, it is a pleasure to appear before the Committee today on the important issue of cargo preference and its impact on U.S. food assistance programs to Russia.

I am Steve McCoy, President of the North American Export Grain Association (NAEGA), the national association of U.S. grain and oilseeds exporting companies and cooperatives.

I appreciate your kind invitation to testify at today's hearing. NAEGA is not, as you know, a supporter of the cargo preference regime. We believe that cargo preference undercuts U.S. agricultural competitiveness; that, as presently administered, it is unreasonable and unfair; and most importantly, that cargo preference diminishes U.S. capabilities to feed the world's needy and poor.

We are unaccustomed to appearing before this Committee on this subject. We have strong views, and we commend you for allowing us to state those views, however unpalatable they may be for the groups and interests that compose your core constituency.

Controversy

We have, like you, in recent weeks, participated in some aspects of the latest cargo preference controversy--this time with respect to food assistance to Russia. It is a controversy we see too often in Washington, D.C. It could easily be about foreign assistance to any other country of the world.

All of the elements of the classic cargo preference confrontation are present:

- a country (in this instance, Russia) in need of U.S. foodstuffs, frustrated and delayed in its receipt of U.S. assistance by debate regarding the terms and cost of high price U.S. flag shipping;
- aligned with that country, U.S. agricultural, foreign policy and humanitarian constituencies, who see their principal objective in food aid as maximizing commodity

deliveries to food aid recipient countries;

- opposing these interests, the U.S. merchant marine and Maritime Administration (MarAd), insisting on their claim to food aid cargoes and food aid funds (as promised to them by law); defensive about the high cost of U.S. shipping, but unmoved by it to propose, or support, meaningful reforms of the current system; unmoved also, by priorities of other agencies of the U.S. government and the recipient country itself.

Lessons of Past and Present

We have seen it all before, and it has always ended with the same result. So, too, in the present case of Russia. By agreement to be signed next week, USDA will set aside at a minimum \$100 million of the \$700 million in Food for Progress (FFP) funds pledged by President Clinton to President Yeltsin in Vancouver (or 20% of the commodity value of the FFP) to pay U.S. shipowners the difference between world shipping rates, which the Russians will bear, and steeply higher-than-market U.S. flag rates (which, on average, will exceed world rates by two to three times).

The U.S. taxpayer will pay this \$100 million bill (as they do the bill for cargo preference applied to food aid generally), but the cost is not theirs alone. The Russian government and people will also pay an indirect cost by reduction in the amount of commodities they can import.

U.S. flag interests win. Russian and U.S. agricultural, humanitarian and foreign policy interests lose. It is a familiar refrain, but one, we believe, that reflects poorly on the wisdom of cargo preference law.

Accommodation

The present controversy has prompted efforts to accommodate disparate interests. For example, responding to allegations of excessive and costly delays in Russian ports, USDA has sought, and achieved, for U.S. flag operators, an assurance of non-discrimination against U.S. flag vessels (this, despite the evidence that delays in these ports are significantly less burdensome than that claimed by U.S. flag operators, who have made such claims, in part, to justify steeply higher U.S. rates).

Also improving the current outlook is a decision by USDA to ban the use of U.S. tankers in the carriage of 1992 crop corn. These vessels are unsuitable for that purpose; and the waiver of their use will assure better quality exports to Russia. (See attached.)

Given the context, USDA has done a skillful job in accommodating larger U.S. and Russian interests with the more isolated interests of U.S. flag operators. But, the immediate problems thereby solved do not begin to approach a solution to the

wider question. Neither has the experience encouraged wider support for U.S. flag objectives in the food aid program.

Differences

At the heart of the larger matter is a fundamental difference of opinion and philosophy regarding the wisdom and effectiveness of cargo preference law.

Supporters of cargo preference law believe that U.S. flag shipping interests supersede all other considerations in the allocation of scarce resources to food aid. Indeed, the cargo preference law gives them that confidence.

75% of food aid cargoes, by law, must travel on U.S.-bottomed vessels at rates determined by MarAd to be "fair and reasonable" without respect to prevailing international rates. Availability of U.S. vessels for such trades (whether suitable, or not) is as determined by MarAd. This means, in most cases, that the law serves first the interests of U.S. flag operators, and only secondarily, the larger U.S. and foreign interest in food aid.

American agriculture desires no less than the U.S. maritime community the survival of an efficient U.S. commercial fleet. However, we question that cargo preference has served that objective. Furthermore, we believe that assistance could be provided to the U.S. merchant marine in ways, such as by direct subsidies, better suited to the achievement of that objective, and at less political risk to the U.S. maritime community.

Disincentives

No U.S. commercial bulk agricultural cargoes today travel on U.S.-bottomed vessels. Nor will that situation change so long as U.S. rates vastly exceed world rates.

Cargo preference provides a direct disincentive for U.S. bulk carriers to be price competitive. Denied price-sensitive commercial markets, U.S. bulk carriers become a captive of their relationship with the U.S. government. That is not healthy, and it has not served the welfare of the U.S. bulk fleet. It is, nevertheless, the course of action that has been dictated by the U.S. flag lobby.

The Future

What, then, of longer term solutions? How can the interests of the U.S. merchant marine be reconciled with the wider interests involved in the programming of U.S. food assistance (or, other interests affected by the application of cargo preference)?

Every U.S. economic interest has the right, perhaps even the obligation, to promote its own agenda. The U.S. maritime community has advanced its agenda, in part, through the medium of food aid. So be it. But let the subsidies thereby paid to the merchant

marine, be honestly and openly admitted and accounted for; let us end the practice whereby assistance to the U.S. merchant fleet is clothed as foreign assistance to Russia or any other country. The costs of cargo preference must be brought into the bright light of public reckoning.

We propose that the current system of cargo preference entitlements be converted to a system of direct subsidies to U.S. flag operators. Eliminate cargo preference. Let the funds now appropriated to USDA, or the Department of Defense, or other agencies (in compliance with cargo preference), be appropriated to MarAd, or some other suitable agency, so that support of the merchant marine is direct and accountable; and the responsibility is lodged in a single agency, and not, as present, spread throughout all of the agencies of the federal government.

We are aware of the conventional political arguments that oppose such a change. Nevertheless, we believe strongly that such a subsidy program would be widely supported, including (with past political experience as our guide) by the Congress itself.

Such a subsidy tool in the hands of MarAd would provide greater flexibility to the program of support for U.S. maritime. It could be used for government impelled cargoes only; or to buy down the cost of U.S. participation in commercial trades, thereby assuring the continuance of U.S. flag presence in the international market.

We believe such a change is warranted and necessary. Failing it, however, we propose other changes in the current cargo preference system.

To prevent abuse, MarAd should be instructed to interpret "fair and reasonable" and "available" with respect to international, and not solely, U.S. flag market conditions. Some "cap" must be placed on rates above which the U.S. government will not pay. Vessels declared "available" for the purpose of receiving cargo preference support must be suitable for the carriage of commodities or goods so encumbered. Here, again, reason must prevail.

Finally, there should be equity for all port ranges of the United States in the program. The program should not operate at the convenience only of U.S. carriers. Lowest landed cost should continue as the operating principle.

Conclusion

U.S. agriculture harbors no ill will towards the U.S. merchant fleet. Agricultural groups do not oppose cargo preference out of spite; nor do they seek to exclude U.S. participation in food aid trades. They seek only reasonableness and fairness in the implementation of cargo preference policy. They seek the means to maximize food aid to needy countries, a role U.S. agriculture is proud to serve.

Subsidies to the U.S. merchant marine--paid from the account of the merchant marine, and not that of agriculture or foreign assistance--can be a matter solely between your Committee and the U.S. maritime community. Under such circumstances, it would be of little interest to U.S. agriculture, or the Russians, or any other food aid recipient country, how much or how little is paid to support the U.S. merchant marine.

We have a need to free American agriculture and food aid recipient countries from the hidden cost of supporting the U.S. maritime community. You may have at hand the tools and capabilities to get the job done. I urge you, at least, to try.

Thank you, Mr. Chairman.

April 8, 1992

Robert M. Goldman
Transportation Division
Agency for International Development
State Annex 14 - Room 1400J
Washington, D.C. 20523

Dear Mr. Goldman:

The Terminal Elevator Grain Merchants Association (TEGMA), the National Grain and Feed Association (NGFA), and the North American Export Grain Association (NAEGA) wish to take this opportunity to thank you for your diligence in securing despatch provisions to PL-480 Title III commodity shipments and to comment on the proposed Title III Charter Party. We recognize that the limited implementation of the commercial terms to Title III represents an effort to err on the side of caution. So while we continue to urge similar changes for PL-480 Title II, as well as Section 416 shipments, we are truly appreciative of the progress made to date.

Our initial review of the proposed Charter Party reveal no fatal flaws in the approach taken by the Agency for International Development (AID) to implement market concepts of demurrage and despatch. Several of our members have, however, conveyed misgivings about a number of clauses to the Charter Party that we believe merit consideration and further revision. These concerns focus on disponent owners of foreign vessels, the notification of vessel owners/agents, and separate load guarantees for tankers and 'tween deckers.

Disponent Owners of Foreign Vessels

As you are already aware, grain industry representatives are concerned about the case of the disponent owner of a foreign flag vessel. In this case the Charter Party would be signed by AID and a time charterer of a foreign vessel. In the event despatch is accrued under the contract, grain companies wonder who would ultimately be responsible for payment of despatch and how payment could be extracted from the party responsible.

Standard commercial contracts provide that the Charterer (in this case AID) is ultimately responsible for payment of despatch if unpaid or unavailable through the vessel owner. We understand that such an approach is not acceptable given that neither CCC or AID desire to be involved in dem/des disputes in any manner and certainly not bear the ultimate responsibility for payment. We would suggest, however, that AID consider two possible solutions to this issue of collecting despatch on foreign flag vessels.

Robert M. Goldman
 April 8, 1992
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First, AID could withhold five percent of its freight payment through the 40 day settlement period allowed under Addendum No. 1 of the NAEGA 2 contract. At the end of the 40 days full payment would be made unless the commodity supplier had a live dispute over despatch. In such an event, the five percent freight payment could be turned over to an escrow account pending arbitration.

Second, AID could implement a penalties provision that would debar foreign flag vessel owners from participating in AID programs if they are delinquent on valid claims for despatch.

Either of these solutions would go a long ways toward ensuring the highest possible level of compliance by owners of foreign flag vessels.

Notification of Vessel Owners/Agents

Given that all disputes surrounding demurrage/despatch and laytime are to be settled through arbitration between the vessel owner and commodity supplier, suppliers believe the Charter Party should contain a clause mandating that copies of said Charter Party be made available to supplier upon execution of the contract. Suppliers should be entitled to all information incorporated in the Charter Party. Suppliers specifically desire the names of the vessel owner and agent, as well as the address of said parties.

Separate Load Guarantees for Tankers, 'Tween Deckers

In a final related matter, we wish to bring to AID's attention the fact that if it negotiates for shipment via tankers and 'tween deckers, it needs to contract with vessel owners for different load guarantees and dem/des rates than those that commonly apply to bulk carriers. Our principal concern in this respect is the considerably longer period of time required for trimming tankers and 'tween deckers, particularly the latter.

While we do not believe that the Charter Party itself should be amended to address this concern, we think that the load guarantees and dem/des rates for tankers and 'tween deckers merit further discussion between AID, CCC and the industry so that appropriate terms may be included in the program announcement or invitation for bids issued by the agency if such vessels are to be applied.

Summary

Overall, the industry is pleased with the approach taken by AID and ASCS in implementing commercial market terms into the Title III shipments. We are particularly pleased with the decision to reference and incorporate the Addendum No. 1 to the NAEGA 2 F.O.B. contract in the terms of the Charter Party and Commodity Invitation for Bids. We are also pleased with

Robert M. Goldman
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your responsiveness in addressing several of our concerns previously expressed in our initial discussions.

We have highlighted three of our most urgent remaining concerns about the Charter Party and hope you will be able to resolve them. We will continue to monitor the practical utility of the contract language in the coming weeks and will contact you should any additional concerns arise.

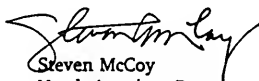
Our continuing goal in this process is to enhance the overall competitiveness in the PL-480 programs for all market participants. The introduction of despatch to these programs should work to the benefit of all parties, including the federal government.

Thank you for providing us with the opportunity to comment on this proposal. We look forward to working with you as we look toward implementing commercial terms in the remaining PL-480 program contracts and in Section 416 contracts. Should you have any questions regarding this matter, please do not hesitate to contact either Tom Erickson ((202) 842-0400), Randy Gordon ((202) 289-0873), or Steve McCoy ((202) 682-4030).

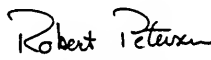
Sincerely,



Kendell Keith
 National Grain &
 Feed Association



Steven McCoy
 North American Export
 Grain Association



Robert Petersen
 Terminal Elevator Grain
 Merchants Association

April 22, 1992

Mr. Gary C. Martin
Deputy Administrator
Commodity Operations
ASCS
U.S. Department of Agriculture
Room 3080 -- South Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Mr. Martin:

Thank you for writing to let us officially know of the Agricultural Stabilization and Conservation Service's (ASCS) decision to implement commercial demurrage/despatch terms into CCC's commodity contracts under PL-480 Title III. We appreciate your office's prompt attention to our request for the inclusion of such terms. We believe they will truly benefit all participants in the program, including the federal government.

We understand that the contract revisions are in the nature of a pilot program and are subject to further review. As such we would like to raise one point of continuing concern for our members; a point that we believe impacts the very purpose for which the industry and the government agreed to implement more commercial terms in Title III -- competitiveness.

Load Guarantees Need Further Revision

Under the newly revised Invitation for Bids issued by CCC Kansas City, the escalating load guarantee table is applicable to all vessel types whether they be self-trimming bulk carriers, tankers, 'tween deckers, or LASH/SEABEE barges. The problem with the load guarantee schedule is that it does not recognize the inherent differences between these vessels -- most notably, the speed at which they can be loaded.

According to industry sources, the escalating loading scale fairly reflects the terms found in purely commercial contracts for loading self-trimming bulk carriers. However, the scale is not realistic for loading tankers, 'tween deckers, and barges. Physical vessel limitations constrain the rate at which suppliers can load tankers to approximately 5,000 MT per day. Similarly, suppliers are prevented from loading 'tween deckers at rates above 2,500 MT per day, regardless of the vessel's overall size. The actual loading capacity for tankers, 'tween deckers, and barges does not match the escalating scale in Title III, which mandates load guarantees from between 4,000 MT and 12,000 MT per day, depending solely on the vessel's size. The fact is that

Gary C. Martin
 April 22, 1992
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commodity suppliers cannot load tankers, 'tween deckers, or LASH/SEABEE barges at the speed required under the escalating scale of the Title III Invitation.

The newly revised Invitation allows commodity suppliers to make only one bid. Such a policy does not serve very well our mutual goals of making Title III more competitive and efficient for vessel owners, exporters, and the government.

The dilemma is described in more detail through the following example.

CCC issues an Invitation for 50,000 MT of wheat under PL-480 Title III. Under the load guarantee schedule all parties know that the guarantee for a 50,000 MT shipment is 12,000 MT per day. Commodity suppliers, however, recognize that if a tanker or 'tween decker receives the freight tender the guarantee cannot be met and demurrage will be certain.

In responding to the Invitation the commodity supplier must take all risk factors into account -- including the likelihood of demurrage. Since the vessel type is not known prior to the bid, the commodity supplier must consider the outstanding risk that he may have to load a tanker, 'tween decker, or LASH/SEABEE barge. If there is reasonable belief that the vessel carrying the shipment will be a tanker, 'tween decker, or barge, then the commodity supplier's bid will reflect his need to recoup any and all possible losses from demurrage incurred from loading a tanker, 'tween decker, or barge.

The real problem with the above scenario is that the current load guarantee will be responsible for less competitive commodity bidding across the board. While PL-480 shipments may only use tankers, 'tween deckers, or LASH/SEABEE barges three percent of the time, market rumors that such vessels may be bidding to carry Title III shipments will force commodity suppliers to increase their commodity bids to account for possible losses.

Solution

The benefits of a competitive market can be better ensured by taking action to make the load guarantees more reflective of not only market reality, but physical possibilities.

We recommend that ASCS make the following changes to the Invitation.

1. The Invitation should include language stating that the existing load guarantee scale is applicable to "self-trimming bulk carriers only".
2. The Invitation should include a separate paragraph denoting that the load guarantee for tankers shall be 5,000 MT per day.
3. The Invitation should include a separate paragraph denoting that the load guarantee for 'tween deckers shall be 2,500 MT per day.

Gary C. Martin
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4. The Invitation should include a separate paragraph denoting that no load guarantee shall apply to LASH/SEABEE barges.
5. The Invitation should solicit bids from suppliers for each of the three categories on each tender where applicable.

Establishing load guarantees for various vessel classes simply recognizes the physical limitations of each class. The proposed revisions, combined with the existing premiums for loading tankers and 'tween deckers, will allow commodity suppliers to offer highly competitive bids based almost entirely on commodity pricing factors only. Importantly, the proposed load guarantees should be considered separate and distinct from the existing load premiums. Both are necessary to ensure the most efficient and competitive environment for commodity bids.

Simply put, in no case should the minimum load guarantees for non-bulk carriers preclude contractors from recovering the actual increased market costs they incur when loading tankers, 'tween deckers, or LASH/SEABEE barges.

We believe that these additional changes to the CCC Title III Invitation would ensure that the benefits of market terms would inure to all parties. The federal government, above all, should recognize a greater efficiency in Title III. If you have any questions regarding this matter, please do not hesitate to contact us.

Sincerely,



Robert R. Petersen
 Terminal Elevator Grain
 Merchants Association



Kendell Keith
 National Grain and
 Feed Association



Steven McCoy
 North American Export
 Grain Association

AMERICAN MARITIME OFFICERS

Affiliated with Maritime Trades Department, AFL-CIO

490 L'ENFANT PLAZA EAST, SW • SUITE 3204 • WASHINGTON, DC • 20024
PHONE (202) 479-1166 FAX (202) 479-1188

**American Maritime Officers, M.T.D., AFL-CIO
Statement on Cargo Preference Oversight before the
Subcommittee on Merchant Marine of the
House Committee on Merchant Marine and Fisheries
June 8, 1993**

**By Charles T. Crangle
Director of Legislative and Congressional Affairs
American Maritime Officers, M.T.D., AFL-CIO**

American Maritime Officers, MTD, AFL-CIO, a union representing U.S. Coast Guard licensed officers in the American Merchant Marine wish to have this statement and any attachments entered into the record of hearing on June 8, 1993 of the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries.

American Maritime Officers represents licensed navigation, engineering and electronics officers in the international, inland waters, coastwise and Great Lakes maritime trades of the United States.

The men and women who are the American Maritime Officers wish to thank you, Chairman Lipinski, for this opportunity to express our opinion of the current state of the U.S. flag bulk shipping industry devoted full or part-time to the carriage of U.S. Government cargo. American Maritime Officers understands that the purpose of the hearing before the Subcommittee is to examine the operation of the ship American provisions of federal law contained in the Merchant Marine Act of 1936 and subsequent Acts. The ship American provisions of law...also known as cargo preference or cargo reservation law...require that certain percentages of cargo impelled or paid for by the United States Government must be carried on U.S.-flag vessels crewed by American citizen mariners.



FOOD SECURITY ACT OF 1985

American Maritime Officers participated in the working out of the 1985 provision of the Food Security Act and agreed to relinquish ship American provision claims on certain government backed credit transactions which financed the shipment of American grown food to foreign nations. I have repeated Section 901(a) of the Merchant Marine Act of 1936:

"Section 901a. The requirements of section 901(b)(1) of this Act and the Joint Resolution of March 26, 1934 (46 U.S.C. App, 1241-1), shall not apply to any export activity of the Secretary of Agriculture or the Commodity Credit Corporation -

(1) under which agricultural commodities or the products thereof acquired by the Commodity Credit Corporation are made available to United States exporters, users, processors, or foreign purchasers for the purpose of developing, maintaining, or expanding export markets for United States agricultural commodities or the products thereof at prevailing world market prices;

(2) under which payments are made available to United



States exporters, users, or processors or, except as provided for in section 901b, cash grants are made available to foreign purchasers, for the purpose described in paragraph (1);

(3) under which commercial credit guarantees are blended with direct credits from the Commodity Credit Corporation to reduce the effective rate of interest on export sales of United States agricultural commodities or the products thereof;

(4) under which credit or credit guarantees for not to exceed 3 years are extended by the Commodity Credit Corporation to finance or guarantee export sales of United States agricultural commodities or the products thereof; or

(5) under which agricultural commodities or the products thereof owned or controlled by or under loan from the Commodity Credit Corporation are exchanged or bartered for materials, goods, equipment, or services, but only if such materials, goods, equipment, or services are of a value at least equivalent to the value of the agricultural commodities or products exchanged or bartered therefor (determined on the basis of prevailing world market prices at the time of the exchange or



barter), but nothing in this subsection shall be construed to exempt from the cargo preference provisions referred to in section 901b any requirement otherwise applicable to the materials, goods, equipment, or services imported under any such transaction."

THE ISSUE OF CREDIT WORTHINESS

Simply stated, transactions in which the United States lends its credit or agrees to underwrite a loan to institutions which financed the shipment of American grown foodstuffs to a foreign nation were not subject to the Ship-American provision of law. Once the Department of Agriculture determines that the ultimate recipient of the foodstuffs is creditworthy...that is the chances were good that the loan will be repaid by that recipient...a loan guarantee is issued.

This Subcommittee is familiar with the Iraq credit transactions in which the Iraqi government was found creditworthy for \$2 Billion worth of American goods, and which proceeded, before ultimate default, to trade American food all over the world for military equipment used against U.S. and allied forces in Operations Desert Storm/Desert Shield. Another credit transaction last year, after the Russians were found creditworthy, resulted in the loss of \$666,300,000 of U.S. taxpayer money when the Russians



defaulted. U.S. citizen mariners were also losers in that most of the agricultural produce was shipped on foreign flag vessels. It was widely rumored at the time the loan guarantees were issued that (a) the nations (Iraq and Russia) were not creditworthy; and (b) the financial analysts at the Department of Agriculture were allegedly instructed to make a positive finding so that the food could be shipped, and that it would be shipped on foreign flag vessels. In all the debate over the recent round of Russian food aid news stories generally failed to report the failure of the Russians to repay the \$666,300,000 in loan guarantees upon which they defaulted. Oleg Klimov, the head of the Russian grain importing agency, objected to the ship American provisions as "robbery" in an April 22, 1993 Knight-Ridder Financial News Services release and Russian official Leonard Cheshinsky was quoted in the Journal of Commerce on April 30, 1993 to the effect that, "requiring Russia to pay U.S.-flagged ship freight rates to transport much of the aid in this package 'should be called robbery.'" This is very like paupers criticizing the make of truck delivering the Christmas turkey.

THIS SUBCOMMITTEE MIGHT WISH TO EXAMINE THE CREDITWORTHINESS ISSUE AS IT RELATES TO THE SHIPMENT OF GOODS ON NON-U.S. VESSELS, SPECIFICALLY:

1. What office at the Department of Agriculture makes the decision on creditworthiness?



2. What other federal agencies are involved in the decision? (Is the U.S. Maritime Administration eligible to participate in the creditworthiness determination?)

3. What Committee of Congress has direct oversight over the decision-making process?

4. Are loan guarantees issued by the Department of Agriculture scored in the Budget process in the same manner as loan guarantees made pursuant to the Title XI loan guarantee program?

THE ISSUE OF EXPANDING INTERNATIONAL TRADE

Section 1141 of the Food Security Act of 1985 contains language indicating that the Agricultural and Maritime Industries were, from the date of the passage of the Act, to coordinate their private and public affairs so as to expand the international trade in American grown foodstuffs in such a manner that exports would increase and that the donated American agricultural produce shipped to foreign nations by the U.S. taxpayer would be carried by U.S.-flag vessel operators with their U.S. citizen crews:

"Sec. 1141. (a) The Congress finds and declares-

(1) that a productive and healthy agricultural industry and a strong and active United States maritime industry are vitally



important to the economic well-being and national security objectives of our Nation;

(2) that both industries must compete in international markets increasingly dominated by foreign trade barriers and the subsidization practices of foreign governments; and

(3) that increased agricultural exports and the utilization of United States merchant vessels contribute positively to the United States balance of trade and generate employment opportunities in the United States.

(b) It is therefore declared to be the purpose and policy of the Congress in this subtitle-

(1) to enable the Department of Agriculture to plan its export programs effectively, by clarifying the ocean transportation requirements applicable to such programs;

(2) to take immediate and positive steps to promote the growth of the cargo carrying capacity of the United States merchant marine;

(3) to expand international trade in United States agricultural commodities and products and to develop, maintain, and expand markets for United States agricultural exports;

(4) to improve the efficiency of administration of both the commodity purchasing and selling and the ocean transportation activities associated with export programs sponsored by the Department of Agriculture;

(5) to stimulate and promote both the agricultural and maritime industries of the United States and encourage cooperative efforts by both industries to address their common problems; and

(6) to provide in the Merchant Marine Act, 1936, for the appropriate disposition of these findings and purposes."

On May 5, 1993 Chairman Richard J. Durbin (D-IL), of the Agriculture Subcommittee of the Committee on Appropriations, and Chairman Neal Smith (D-IA), of the Commerce, Justice, State, and Judiciary Subcommittee of the Committee on Appropriations conducted



a joint hearing on the efficiency of the ocean transportation system and the problems encountered by U.S.-flag carriers delivering American food aid through that system to the nations which once made up the U.S.S.R.. I believe the issues addressed in that hearing have a direct bearing on the issues before you today and a thorough reading of that transcript would be most instructive.

SHIP-AMERICAN AND ISRAEL

U.S.-flag ocean services for the carriage of donated American grown produce to Israel might serve as a model of how the Department of Transportation and Agriculture should address all donated shipments. Members of this Subcommittee will, I believe, discover that planning for the Israeli shipments, coordination, attention to detail and a determination to make the system work have lead to competitive rates. It is the obligation of the Departments involved to "improve the efficiency of administration of both the commodity purchasing and selling and the ocean transportation activities...by the Department of Agriculture" as contemplated by Congress. The joint Durbin-Smith testimony indicated a lack of determination to make the ship American system work efficiently.

I believe it is a fair statement that the two Subcommittee



Chairmen were quite dissatisfied with the nature of the planning by the State, Agriculture and Transportation Departments for the delivery of the food to Russia. The Chairmen urged closer cooperation between the Departments on the ground that the delays and chaotic conditions existing in the Russian port and inland transportation system, with which the U.S.-flag operators were forced to contend by reason of the contracts they had with the Department of Agriculture, inflated the costs of the delivery of food to Russia. I think it is also fair to say that the charges which U.S.-flag carriers built into their bids were based upon the failure of the Departments of State, Agriculture, and Transportation to anticipate and deal with disruptions and lack of commercial regularity in Russia. I have attached two articles, one which appeared in the Journal of Commerce on June 4, and another in Lloyd's List on June 3, dealing with Russian Port congestion.

We understand that a meeting between representatives of various government agencies concerned in the shipment of U.S. taxpayer donated food overseas has taken place. American Maritime Officers suggests that this Subcommittee monitor those meetings to see to it that the Congressional mandate to improve the efficiency of the system is adhered to. We stand ready to cooperate with this Subcommittee and the various Departments of the Executive branch to make the shipment of U.S. taxpayer donated American grown foodstuffs more efficient.



LIBERTY MARITIME CORPORATION

July 29, 1993

The Honorable William O. Lipinski
Chairman
Subcommittee on Merchant Marine
House Committee on Merchant Marine and Fisheries
1334 Longworth House Office Building
Washington, D.C. 20515

Re: June 8, 1993 Cargo Preference Oversight Hearing

Dear Mr. Chairman:

Thank you for your June 29, 1993 letter requesting responses to additional questions to complete the record for the above hearing. I appreciated the opportunity to testify.

You asked what agencies we contact when problems arise and whether they are responsive. We seek assistance from MarAd, the shipper agency (usually USDA or AID) and the State Department. MarAd is almost always helpful but is hampered by the somewhat dismissive attitude of the shipper agencies. That attitude is wrong as a matter of policy, because MarAd is the agency with the most shipping expertise, and as a matter of law, because MarAd has supervening authority under section 901(b)(2) of the Merchant Marine Act, 1936. State is usually helpful, especially after it hears from influential legislators supportive of the U.S. merchant marine. In contrast, the shipper agencies historically have taken a "hands-off" attitude, claiming that the problems are a "commercial matter," even though it is the shipper agencies that approve the charterparties that set the stage for the delays and over-charging we so often encounter.

You asked whether a U.S. government representative is available in a foreign port to provide assistance when problems arise. The situation varies from country to country. The agency with shipping expertise, MarAd, does not have the manpower to have personnel in discharge ports, although I was pleased to hear that a MarAd official has met with officials in the former Soviet republics to address the problems there. The shipper agency may have an official in the discharge port but that individual rarely has any shipping expertise and is often reluctant to intervene or is more interested in the recipient country's side of the story. Local State Department officials are sometimes helpful depending on the circumstances.

LIBERTY MARITIME CORPORATION

The Honorable William O. Lipinski
 July 29, 1993
 Page 2

You asked whether USDA has ever explained its reasons for requiring U.S. operators to assume loading and discharging costs -- a policy at odds with commercial practice that raises freight rates. While I am unaware whether USDA has done so, the other food aid shipper agency, AID, has explained why USDA and AID prefer "full berth terms" charters:

[Full berth terms are] in keeping with the policy of [USDA] in recent years that maximum liability for risks and expenses be placed on vessel owners USDA understands that this approach results in premium freight rates, but believes that is the only workable one for the program.

(Letter from Howard D. Cradick, Chief, Transportation Division, Office of Procurement, AID dated Oct. 19, 1990).

You asked what modifications we have requested with respect to MarAd's fair and reasonable rate regulation and whether those modifications would result in higher rate determinations. We have recommended that MarAd adopt a marketplace approach under which the lowest competitive bid is deemed fair and reasonable. This marketplace approach will result, on average, in lower rates. The current regulation, which analyzes each vessel's costs, tends to penalize more efficient operators, although it does prevent price-gouging.

You asked what the difference in rates is between U.S. and foreign vessels with similar characteristics and the reasons for the difference, assuming that all vessels are treated the same. It is difficult to respond because U.S. vessels comply with much stricter labor, environmental and safety standards than foreign vessels and USDA's and AID's disadvantageous charter terms hurt U.S. operators more than foreign operators. To the extent it is possible to make a comparison, a recent Kyrgyzstan tender is illustrative. The low U.S. bid was \$53.98 and the low foreign bid was \$34.50, a difference of \$19.48, which is often less than the gap between the cost of U.S. and foreign grain.

Finally, you have asked whether the Russian authorities have ever suggested the payment of, as you put it, "special fees" or "bribes" to expedite the handling of U.S.-flag vessels in their ports. While I am not aware of any requests for "bribes," the industry consensus is that requests for additional "fees" are not unusual in Russia and elsewhere. As I have indicated, full berth terms charters, which shift the risk of unloading to the vessel owner, place the owner in a very weak bargaining position when such


LIBERTY MARITIME CORPORATION

The Honorable William O. Lipinski
July 29, 1993
Page 3

fees are demanded. If the charterer took responsibility for discharge, as is customary in the commercial world, "fees" would not be an issue.

Once again, I appreciated the opportunity to testify. Continued oversight by your subcommittee is vital to ensuring proper administration of the cargo preference laws.

Sincerely,



Philip J. Shapiro
President and CEO

STATEMENT OF JAMES R. TARRANT
DEPUTY ASSISTANT SECRETARY
FOR TRANSPORTATION AFFAIRS

DEPARTMENT OF STATE

BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE
OF THE
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

JUNE 23, 1993

Good morning Mr. Chairman, ladies and gentlemen. My name is James R. Tarrant. I am Deputy Assistant Secretary for Transportation Affairs in the Economics and Business Bureau of the Department of State. With me are Harry Klein, Director of Humanitarian Affairs of the Office of the Coordinator for the New Independent States and Thomas J. Miller, Director of the Office of Israel and Israeli/Arab Affairs. We are pleased to have this opportunity to discuss cargo preference policy issues.

The Department of State itself ships only a small amount of cargo subject to the Cargo Preference Act. According to data from the Maritime Administration, the State Department shipped about 5,300 metric tons of cargo in 1991, the latest year for which we have data available. The Agency for International Development, on the other hand, transports significant amounts of preference cargo. In 1991, AID shipped more than 2.8 million metric tons on U.S.-flag vessels, generating more than 302 million dollars of revenue for U.S.-flag carriers.

In bilateral and multilateral negotiations with foreign governments, the Department has defended the U.S. cargo preference system on a number of occasions. We have been able to make our biggest contribution to the promotion of U.S. maritime interests by attacking foreign restrictions on U.S. ocean carriers. Our efforts in a number of countries around the world have developed important new opportunities for the industry.

KUWAIT

Our vigorous efforts to open the shipping market in Kuwait illustrate the Department's most recent support for the industry. The Department raised this issue repeatedly at the highest levels of the Kuwaiti Government. In February the Secretary of State discussed it personally with the Amir Jaber, Crown Prince and Prime Minister Saad as well as Deputy Prime Minister and Foreign Minister Sabah. On April 4, the Government of Kuwait decided to allow U.S. shipping companies to compete for Kuwaiti government project cargoes. The decision exempts our carriers from the 1986 regulation giving United Arab Shipping Company the right of first refusal.

Mr. Chairman, you asked how the Department plans to monitor the Government of Kuwait's commitments.

- o The U.S. Embassy in Kuwait has worked with U.S. shipping firms, the Government of Kuwait and public procurement agencies to ensure the April 4 decision is publicized and make sure that U.S. companies actually benefit from it.
- o The Embassy provided U.S. shipping companies with an English translation of the decision and works with them to continue their marketing efforts.
- o The Embassy is also arranging meetings with major government procurement agencies, including the Kuwait

Petroleum Company, to advise them directly of the decision and of the strong interest of U.S. companies in carrying the project cargoes.

As you might expect, the results in terms of actual business in the ten weeks since the decision was made have been slight but the Embassy is continuing its efforts. We fully anticipate that U.S. firms will, over time, benefit significantly from this change to competitive conditions. Ambassador Gnehm places a high priority on this and has been personally involved.

ISRAEL

Mr. Chairman, you have also asked about the degree to which U.S. vessels will have a reasonable share in the cargoes generated by the loan guarantee program for Israel. In an exchange of letters between the Secretary of State and the Israeli Ambassador in December 1992, the Government of Israel committed to having U.S. business share the benefits of economic growth promoted by the guaranteed loans. The understanding reflects discussion between the Administration and Congressional leadership. Congress authorized the program last year.

To carry out its commitment, Israel has outlined steps to provide information on business opportunities to U.S. firms. The Department has participated in an Israeli Embassy briefing for the U.S. maritime industry. We also raised shipping concerns at the bilateral consultation with the Israeli Government on economic issues in Jerusalem earlier this month. We will review progress in this area through regular consultation. If it becomes apparent that Israeli efforts have not led to a significant increase in the purchase of U.S. goods and services, the Department will consider further appropriate steps.

CARGO PREFERENCE FOR HUMANITARIAN ASSISTANCE

Finally, Mr. Chairman, you expressed interest in the Department's commitment to cargo preference for humanitarian assistance programs. You have asked whether the Department routinely negotiates cargo preference provisions into agreements for humanitarian assistance. As do other Executive Branch agencies, we comply with the requirements of the cargo preference laws. In arrangements for the shipment of humanitarian cargoes, the Agency for International Development routinely applies cargo preference provisions in accord with the Cargo Preference Act of 1954.

I understand that Congress has a particular interest in the assistance program for Russia and other Newly Independent States of the Former Soviet Union. As you know, Secretary of Agriculture Espy stated that in accordance with the cargo preference laws, the Administration will take such steps as are necessary and practicable to assure that 75 percent of the commodities under the 700 million dollar "Food for Progress" package of assistance will be shipped on U.S.-flag vessels. The Maritime Administration and Agriculture Department are working together to offer U.S. carriers a fair share of the cargoes at the most economical cost possible. I believe that other agencies have testified on this in detail.

As you are also aware, Defense Department appropriations are being used to transport bulk wheat and other commodities not part of this package to the former Soviet Union. Funds

made available under the Dire Emergency Supplemental Appropriations Act are authorized to be used for such purposes "notwithstanding any other provision of law" Consequently, the General Counsel of the Department of Defense determined that the Government is authorized to arrange for the ocean transportation of such cargo free of the requirements in other laws which otherwise apply.

Consistent with the General Counsel's determination, the bidding for the shipment of these commodities has been opened to all carriers. This decision reflects a compelling need to fulfill without delay the commitments that the United States has made to provide much-needed food assistance to the former Soviet Union.

In conclusion, I believe that the record will show that the Department continues to work diligently on behalf of American business overseas. We would be happy to answer any questions.



United States Department of State

Washington, D.C. 20520

July 14, 1993

Dear Mr. Hastings:

At the oversight hearings convened June 23 by the Subcommittee on Merchant Marine about the subject of cargo preference, you raised some questions which I would like to answer.

Attached are data I agreed to provide you about the preference cargoes shipped by the Department and the Agency for International Development (AID). The figures were compiled by the Maritime Administration on cargoes shipped in 1991, the latest year for which we have information.

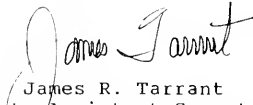
You also asked if the Department had issued instructions on the United States-flag shipping and reporting requirements to comply with the cargo preference laws. Operational procedures for the Department are set out in the Foreign Affairs Manual. Volume 6 covers the use of U.S.-flag and foreign-flag vessels for the shipment of personal effects of Department of State and AID employees and Department of State supplies. The instructions contain explicit reference to the relevant cargo preference laws and provide detailed procedures for carrying out this mandate. The Department's Transportation Division has the responsibility for monitoring compliance. AID has similar procedures carried out by its Transportation Division. For your information, I am enclosing copies of the sections of the Foreign Affairs Manual relating to the shipment of personal effects of State and AID employees and agency supplies.

Mr. Alcee L. Hastings,
Subcommittee on Merchant Marine,
House of Representatives.

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I hope that my testimony at the hearing and this information will clear any doubts about the Department's commitment to the cargo preference laws. Please do not hesitate to contact the Department if you have additional questions.

Sincerely,



James R. Tarrant
Deputy Assistant Secretary
Transportation Affairs

Attachments:

1. Preference Cargoes Shipped U.S. Government Agencies.
2. Foreign Affairs Manual, 6 FAM 166 and 6 FAM 192.

cc: Mr. William Lipinski, Chairman
Subcommittee on Merchant Marine
House of Representatives

Table 15: GOVERNMENT-SPONSORED CARGOES--CALENDAR YEAR 1991

(Note: These numbers do not include domestic shipments)

PUBLIC LAW 664 CARGOES:

Agency for International Development (AID):

Program	U.S.-Flag Revenue (\$1,000)	Total Metric Tons	U.S.-Flag Metric Tons	Percentage U.S.-Flag Tonnage
Loans and Grants				
Liner	19,025	132,720	89,063	67.1
Bulker	9,948	251,432	103,357	41.1
Tanker	0	25,387	0	0.0
TOTAL	28,973	409,539	192,420	46.9 ¹
P.L. 83-480 - Title II				
Liner	107,680	989,201	742,023	75.0
Bulker	80,641	983,845	864,375	87.9
Tanker	10,483	63,766	63,766	100.0
TOTAL	198,804	2,036,812	1,670,164	82.0
P.L. 83-480 - Title III				
Liner	2,086	15,031	15,031	100.0
Bulker	51,137	986,086	674,587	68.4
Tanker	18,794	305,169	292,653	95.9
TOTAL	72,017	1,306,286	982,271	75.2 ²
Population Division	2,445	3,313	3,269	98.7
Department of Agriculture:				
P.L. 83-480 - Title I				
Liner	4,452	60,818	48,322	79.5
Bulker	92,101	2,290,425	1,746,906	76.3
Tanker	13,379	312,125	287,674	92.2
TOTAL	109,932	2,663,366	2,082,902	78.2 ³
Section 416				
Liner	1,584	19,575	8,279	42.3
Bulker	50,667	1,329,304	1,034,512	77.8
Tanker	3,542	92,997	92,997	100.0
TOTAL	55,793	1,441,876	1,135,788	78.8 ²
Food for Progress				
Liner	4,153	24,249	24,249	100.0
Bulker	24,163	556,151	400,751	72.1
Tanker	0	0	0	0.0
TOTAL	28,316	580,400	425,000	73.2 ²

Table 15: GOVERNMENT-SPONSORED CARGOES--CALENDAR YEAR 1991 (CONTINUED)
(Note: These numbers do not include domestic shipments)

Department of Energy:				
Bonneville Power Administration	2	93	3	3.2 ^a
Strategic Petroleum Reserve	0	0	0	0.0
Department of Health and Human Services	58	87	67	77.0
Department of Justice Programs	55	74	56	75.7
Department of Interior Bureau of Reclamation	7	122	21	17.2 ^a
Department of Treasury Bureau of Engraving	18	314	217	69.1
National Aeronautics and Space Administration	29	115	36	31.3 ^a
National Science Foundation	4,199	26,335	26,287	99.8
General Services Administration	159	224	121	54.0
Department of Transportation Federal Transit Administration	1,515	6,484	2,586	39.8 ^a
U.S. Information Agency Voice of America	390 900	977 3,260	563 2,552	57.6 78.3
Department of State: Foreign Building Office Other Agencies	3,896 1,403	13,492 1,712	7,876 1,303	58.4 76.1
Tennessee Valley Authority	17	165	142	86.1
Other Agencies ^b	164	266	102	38.3 ^a

PUBLIC RESOLUTION 17 CARGOES:

	Total Metric Tons	U.S.-Flag Metric Tons	Total Freight Revenue	U.S.-Flag Freight Revenue	Percentage U.S.-Flag
Eximbank	110,914	77,168	35,116,887	25,388,492	72.3 ⁷

Table 15: GOVERNMENT-SPONSORED CARGOES--CALENDAR YEAR 1991 (CONTINUED)

(Note: These numbers do not include domestic shipments)

CARGO PREFERENCE ACT OF 1904 CARGOES:

	Total Metric Tons	Metric Tons Dry Cargo	Metric Tons Petroleum	Percentage
Department of Defense Troop Support Cargoes: ^a				
Military Sealift Command (MSC)				
U.S.-flag privately-owned vessels	2,258,635	2,258,635	0	17.4
U.S. Government-owned vessels	1,373,735	1,217,520	156,215	10.6
MSC chartered vessels	6,602,165	706,408	5,895,757	50.7
Foreign-Flag vessels	2,775,531	754,123	2,021,408	21.3
Total carriage of MSC Troop Support Cargo	13,010,066	4,936,686	8,073,380	100.0
	U.S.-Flag Revenue (\$1,000)	Total Metric Tons	U.S.-Flag Metric Tons	Percentage U.S.-Flag Tonnage
Department of Defense Commercial Contractor Cargoes:				
Army Materiel Command	4,304	49,481	46,471	93.9
Air Force	2,167	2,470	2,467	99.9
Corps of Engineers	1,997	6,671	6,488	97.3
Defense Logistics Agency	925	4,646	4,451	95.8
Navy	6,415	167,833	160,405	95.6
Total U.S.-Flag carriage Department of Defense Commercial Contractor Cargoes	15,808	231,101	220,282	95.3
Defense Security Assistance Agency:				
Foreign Military Financing and MAP Merger Programs	30,950	148,263	92,324	62.3
International Narcotics Control Act Section 517, FAA	1,945	8,132	8,132	100.0
Southern Region Amendment Section 516, FAA	2,673	2,718	2,649	97.5 ⁹
Section 519, FAA	738	1,236	1,236	100.0 ⁹

1. The U.S.-flag percentage figure reflects an overall noncompliance position. However, MARAD determined that U.S.-flag bulkers were not available for 12,477 metric tons nor tankers for 25,387 metric tons. Based on this determination the bulkers still do not meet the statutory requirement; however, the program overall did reach the required 50 percent.
2. U.S.-flag participation fell below the 75% requirement for the program and dry bulker totals. On a country by country basis some participating countries fell below the 75% requirement threshold.
3. Overall, U.S.-flag participation met the 75% requirement. Although on a Purchase Authorization (PA) basis some PAs were below the compliance requirement, USDA made up the shortfall in another PA.
4. This agency complied with the statute, as imbalance in favor of foreign-flag shipments was due to the non-availability of U.S.-flag service.
5. These programs' tonnages are reflected in metric tons for uniformity only. Cargo preference compliance for those programs involving high cube/low density cargo, is achieved on a gross revenue ton basis. Percentages reflected on a weight tonnage basis for such programs do not necessarily represent the exact extent of the programs' compliance with the statute.
6. Cargo of Government agencies that generated less than 25 metric tons of cargo in 1991.
7. Compliance is based on freight revenue only. U.S.-flag participation on a tonnage basis was 70 percent.
8. Data provided by the Military Sealift Command and does not include Foreign Military Sales or domestic shipments.

FAM06-0166 USE OF U.S.-FLAG AND FOREIGN-FLAG VESSELS FOR STATE AND USIA
(TL: GS-431; 9-29-90) (Uniform State/AID/USIA)

Section 901 of the Merchant Marine Act of 1936 (see section FAM06-0182.3) provides that travel and transportation of effects shall be on ships registered under the laws of the United States where such ships are available unless the necessity of the mission requires the use of a ship under a foreign flag. It also vests in the Comptroller General special enforcement responsibilities.

166.1 Definitions (TL:GS-431; 9-29-90) (Uniform State/AID/USIA)

The following definitions apply specifically to section 166:

(1) U.S. flag vessel: vessel registered under the laws of the United States;

(2) Direct: without transshipment en route;

(3) Foreign flag vessel: vessel registered under the laws of a foreign country; and

(4) Nearest: measurement from point of origin to point of destination according to travel by the usually traveled route.

166.2 Standards for Shipment for State and USIA (TL: GS-431; 9-29-90)
(Uniform State/AID/USIA)

a. Posts shall exert reasonable efforts to analyze schedules and tariffs on a worldwide basis in routing effect consistent with the following standards which are for guidance only:

(1) When both U.S. flag vessels and foreign flag vessels operate directly between a port serving the place where the transportation of effects originates and a port serving the actual destination, shipment of effects shall be made on an U.S. flag vessel;

(2) When U.S. flag vessels do not operate directly between a port serving the place where transportation of effects originates and the port serving the actual destination, and foreign flag vessels do so operate, shipment of effects shall be made on a foreign flag vessel;

(3) When there are neither U.S. flag vessels nor foreign flag vessels operating directly between a port serving the place where transportation of effects originates and the port serving the actual destination, and it can be determined that U.S. flag vessels are available for any segment of the journey, the shipment of effects shall be by such routing and shall include U.S. flag vessels where operating. Waiting time at point of

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transshipment shall be governed by paragraph (4) of this section. More than one transshipment for the sole purpose of using U.S. flag vessels is not required; and

(4) Foreign flag vessels may be used for the shipment of furniture and household and personal effects including privately-owned motor vehicles when:

(a) U.S. flag vessels are not scheduled to call at the port of loading within 30 days after:

(i) Notice to ship based on need for immediate shipment of the effects has been received by the post; or

(ii) The effects are ready for shipment, which ever is later;

(b) Agents of U.S. flag vessels cannot give reasonable assurance that an U.S. flag vessel scheduled to call at the port of loading within the time specified in subparagraph (a) above:

(i) Will actually call at such port of loading within 30 days as scheduled; and will actually discharge cargo at scheduled destination port within two weeks after arrival regardless of port congestion; and where agents of foreign flag vessels can give such assurance due to their preferential berthing arrangements at the port; or

(ii) Will discharge cargo at scheduled destination port without transshipment; and where agents of foreign ships can give such reasonable assurance.

(c) The authorizing officer at the post determines that safe storage facilities are not available and that delay in shipment would expose effects to serious damage or loss from climatic conditions, excessive humidity, pilferage, sabotage, or other hazards beyond the control of the post. In such instances, a statement justifying the use of a foreign flag vessel is required.

b. When the origin or destination is a seaport, it is not necessary to send the shipment to another port in order to utilize a U.S. flag vessel.

166.3 Documentation of Shipments for State and USIA

166.3-1 Compliance With Title 41 of the Code of Federal Regulations (41 CFR 101) (TL:GS-431; 9-29-90) (Uniform State/USIA)

To assure compliance with section 901(a) of the Merchant Marine Act of 1936, and 46 U.S.C. 1241 regarding the use of U.S. flag vessels for transporting household goods and/or personal effects of U.S. Government

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employees, see 41 CFR 101-41.309-1 Factual Support of Charges-International Shipments, and 6 FAM 184.3-5.

166.3-2 Issuance of Certificate (TL:GS-431; 9-29-90) (Uniform State/AID/USIA)

When the utilization of foreign-flag service is deemed justified under section FAM06-0166.2, written authorization must be issued. This certificate of justification (format shown in FAM06-0135 - Exhibit 135.5) must be signed by an authorizing officer designated by the Department, or Agency, or principal officer of the overseas post. Full justification for the use of a foreign-flag vessel must be shown in the certificate. The certificate (which may be reproduced locally) must be prepared in triplicate. The original and one copy are submitted to the ocean carrier, freight forwarder, or household goods transporter, as appropriate; one copy is retained by the issuing officer or post. The transportation company must be instructed to submit one signed copy of the certificate with the bill to the paying office.

166.4 Use of U.S. Flag and Foreign Flag Ships by AID

166.4-1 Policy (TL:GS-431; 9-29-90) (Uniform State/AID/USIA)

Although Executive Order 10784 exempts AID from the requirements of section 901 of the Merchant Marine Act of 1936, which requires U.S. Government employees to use ships of U.S. registry when such ships are available, AID's policy is that U.S. flag vessels are to be used for the transportation of effects unless such ships are not available or their use is not feasible.

166.4-2 Standards for Shipment (TL:GS-431; 9-29-90) (Uniform State/AID/USIA)

a. Instances of exception to this principle include the following:

- (1) When AID/W or the AID mission director certifies that U.S. flag vessels do not provide adequate service to the destination;
- (2) When the shipment of effects would be delayed an unreasonable period of time awaiting an U.S. flag vessel; and
- (3) When payment or services can be made through use of surplus foreign credits owned by the United States or from AID trust funds and U.S. flag steamship lines will not accept such funds.

b. Whenever a foreign-flag vessel is used, the AID mission or AID/W, as appropriate, is to annotate its records to indicate the reason for such use.

FAM06-0192 USE OF U.S.-FLAG AND FOREIGN-FLAG VESSELS

192.1 Policy (TL:GS-368: 10-13-87) (Uniform State/AID/USIA/Commerce/Agriculture)

a. Under the Cargo Preference Act of 1954 (46 U.S.C. 1241 (b), which is Section 901 (b) of the Merchant Marine Act), Government agencies acquiring, whether within or outside the United States, supplies that may require ocean transportation shall ensure that at least 50 percent of the gross tonnage of these supplies (computed separately for dry bulk carriers, dry cargo liners, and tankers) is transported on privately-owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels. (To determine the availability of U.S.-flag commercial vessels at fair and reasonable rates, see sections FAM06-0192 and FAM06-0193 below.) This applies when the supplies are:

- (1) Acquired for the account of the United States;
 - (2) Furnished to, or for the account of, a foreign nation without provision for reimbursement;
 - (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
 - (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- b. The 50 percent requirement shall not prevent the use of privately-owned U.S.-flag commercial vessels for transportation of up to 100 percent of the cargo subject to the Cargo Preference Act of 1954.

192.2 Applicability (TL:GS-368; 10-13-87) (Uniform State/AID/USIA/Commerce/Agriculture)

Except as provided in sections FAM06-0192 and FAM06-0193 below, the Cargo Preference Act of 1954 applies to the following cargoes:

- (1) Supplies owned by the government and in the possession of:
 - (a) The Government;
 - (b) A contractor; or

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(c) A subcontractor at any tier.

(2) Supplies for the use of the Government that are contracted for and require subsequent delivery to a Government activity but are not owned by the Government at time of shipment; and

(3) Supplies not owned by the Government at the time of shipment that are to be transported for distribution to foreign assistance programs, but only if these supplies are not acquired or contracted for with local currency funds (see section FAM06-0192.3).

192.3 Exceptions (TL:GS-368; 10-13-87) (Uniform State/AID/USIA/Commerce/Agriculture)

The policy and procedures in this section do not apply to the following:

a. Shipments aboard vessels of the Panama Canal Commission or as required or authorized by law or treaty;

b. Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; or

(4) Small purchases under Part 13 of the Federal Acquisition Regulation (FAR).

192.4 Procedures (TL:GS-368; 10-13-87) (Uniform State/AID/USIA/Commerce/Agriculture)

For purposes of determining the availability of privately-owned U.S.-flag commercial vessels at fair and reasonable rates, rates filed and published in accordance with the requirements of the Federal Maritime Commission (FMC) may be accepted as fair and reasonable. When applicable rates for charter cargoes are not in published tariffs, a determination as to whether the rates are fair and reasonable shall be obtained from the Maritime Administration (MARAD).

STATEMENT OF THE
AMERICAN FARM BUREAU FEDERATION
TO THE
HOUSE MERCHANT MARINE AND FISHERIES SUBCOMMITTEE
ON MERCHANT MARINE
REGARDING CARGO PREFERENCE

June 23, 1993

The American Farm Bureau Federation, the nation's largest organization of farmers and ranchers, appreciates this opportunity to present its views on U.S. cargo preference laws.

Farm Bureau's position on cargo preference has remained essentially unchanged since the program's inception. We believe any subsidies to the maritime industry should not be at the expense of U.S. food aid programs. Since cargo preference was expanded in 1985 from 50 percent of all aid shipments to 75 percent, many millions of additional dollars have been diverted from food aid to shipping subsidies.

Farm Bureau opposes cargo preference and believes the program should be terminated. Subsidies to the maritime industry should be considered in Congress and authorized on their merits, not hidden in our humanitarian food aid programs.

Having a lock on a large percentage of food aid exports allows shippers to raise prices well above competitive levels. Rates are quoted at two, three and, in some cases, five times world market levels. As a result, a large percentage of the funding appropriated by Congress for food aid is siphoned off to pay for the additional cost of transportation.

In the case of the aid package to the former Soviet Union, it is estimated that as much as \$200 million of the \$700 million in food aid that has been offered to those newly independent nations would have to be spent just to transport the food and grain on U.S. vessels.

Farm Bureau believes it is well past time for a thorough review of cargo preference. Its cost and effect on U.S. aid programs should be given careful scrutiny. In the meantime, we strongly support legislation that would exempt food aid shipments under the Freedom Support Act from cargo preference requirements. Failing that, we believe a limit should be placed on the percentage by which U.S. rates may exceed competitive rates in the world market.

Under no circumstance should cargo preference be expanded to commercial export sales, to additional existing export programs or to any new export programs.



United States Department of State

Washington, D.C. 20520

August 6, 1993

Dear Mr. Chairman:

Following the June 23, 1993 hearing at which James Tarrant testified, additional questions were submitted for the record. Please find enclosed the responses to those questions.

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

Enclosures:
As stated.

The Honorable
William O. Lipinski, Chairman,
Subcommittee on Merchant Marine,
Committee on Merchant Marine and Fisheries,
House of Representatives.

1. WE HAVE A COPY OF A LETTER DATED JUNE 7, 1993 FROM THE DEPUTY MARITIME ADMINISTRATOR TO THE ASSISTANT SECRETARY OF STATE SUGGESTING LANGUAGE TO INCLUDE IN LOAN AGREEMENTS WITH ISRAEL THAT WOULD ENCOURAGE THE PURCHASE OF U.S. GOODS AND TRANSPORTATION. ON APRIL 12, 1993, ROBERT BRADTKE FROM THE STATE DEPARTMENT WROTE TO CONGRESSWOMAN HELEN BENTLEY ABOUT A COMMITMENT CONTAINED IN AN EXCHANGE OF LETTER BETWEEN THE SECRETARY OF STATE AND THE ISRAELI AMBASSADOR THAT COMMIT'S THE GOVERNMENT OF ISRAEL TO USE ITS BEST EFFORTS TO INVEST IN U.S. GOODS AND SERVICES WITH MONEY DERIVED FROM U.S. LOAN GUARANTEES TO ISRAEL. IN LIGHT OF THIS CORRESPONDENCE, DOES THE STATE DEPARTMENT PLAN TO WRITE A SIDE AGREEMENT WITH ISRAEL, USING THE RECOMMENDED LANGUAGE IN THE MARAD LETTER, TO FIRM UP THIS COMMITMENT?

We have examined MARAD'S suggestion that we ask the Government of Israel to include language in loan documents for each commercial entity which receives funds under the loan guarantee program. However, the program is structured in such a way that the specific end use of the funds channeled to the commercial banking sector cannot be identified separately. Thus, there is no way to include such language in loan documents.

2. WHAT STEPS HAS THE STATE DEPARTMENT TAKEN TO PROMOTE A U.S.-FLAG FLEET IN CONNECTION WITH U.S. LOAN GUARANTEES, OTHER THAN THE CORRESPONDENCE MENTIONED ABOVE?

The Department of State raised this issue during U.S.-Israel economic consultations in Jerusalem on June 8 - 9, 1993. The head of the U.S. delegation to these talks made a strong point in noting the concerns of the U.S. maritime industry regarding the loan guarantee program. The Israeli side

-2-

in the talks acknowledged the interest of the American maritime industry in the loan guarantee program and agreed that the sector will be treated as suppliers of services under the program. The Israelis also agreed that efforts will be undertaken to ensure that U.S. shipping companies receive information on Israeli Government commercial transactions made under the program.

We have a commitment from the Government of Israel that it will use its best efforts to see that purchases of U.S. goods and services increase as a result of the loan guarantees. If, as we review progress in the area through our bilateral consultations with Israel, it becomes clear that these efforts have not produced adequate purchases of U.S. goods and services, we will consider what additional steps will be required.

3. WHEN WILL THE STATE DEPARTMENT ISSUE A REPORT TO CONGRESS AS TO HOW AND WHERE THE \$10 BILLION IN LOAN GUARANTEED FUNDS ARE SPENT?

The Administration will provide a report to the Congress on December 31st of each year, as provided in the legislation establishing the loan guarantee program.

4. WHAT MECHANISM DOES THE STATE DEPARTMENT HAVE TO MONITOR THE GOVERNMENT OF KUWAIT'S USE OF U.S. FLAG VESSELS TO CARRY U.S. GOODS TO KUWAIT FOR REBUILDING THE COUNTRY AFTER THE WAR?

The U.S. Embassy in Kuwait is in regular contact with the Kuwaiti Government about ways to carry out the April 4 decision giving U.S. shipping lines the opportunity to bid for project cargoes. The Ambassador has raised the issue himself at senior levels of the responsible ministries. The Embassy provided U.S. shipping companies with an English translation of the decision and is working with the carriers to continue their marketing efforts. The Embassy is also arranging meetings with the principal Kuwaiti Government procurement agencies to advise them directly of the decision and the strong interest of our carriers in bidding for the project cargoes.

5. WITH REGARD TO U.S. GOVERNMENT GUARANTEES, OTHER FEDERAL DEPARTMENTS SUCH AS TREASURY AND DEFENSE HAVE ISSUED U.S.-FLAG SHIPPING AND REPORTING REQUIREMENTS ON THEIR PROGRAMS TO COMPLY WITH CARGO PREFERENCE. HAS THE STATE DEPARTMENT ISSUED SIMILAR INSTRUCTIONS FOR APPLICATION TO ITS PROGRAMS? IF NOT, WHY?

The State Department has issued detailed instructions for implementing cargo preference requirements. All operational procedures for the Department are set out in the Foreign Affairs Manual. Volume 6 covers the use of U.S.-flag and foreign-flag vessels for the shipment of personal effects of Department of State and AID employees and Department of State supplies. The instructions contain explicit reference to the relevant legislation, Section 901 of the Merchant Marine



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Act of 1936 and the Cargo Preference Act of 1954. Working closely with the Maritime Administration, the Department's Transportation Division monitors compliance. AID has similar procedures monitored by its Transportation Division.

6. DURING THE NEGOTIATIONS WITH THE ISRAELI GOVERNMENT, WHAT STEPS DID THE STATE DEPARTMENT TAKE TO PROMOTE THE USE OF U.S.-FLAG VESSELS IN CONNECTION WITH PURCHASES BACKED BY THE LOAN GUARANTEES?

The head of the U.S. delegation made a strong point in noting the concerns of the U.S. maritime industry. The Israeli side in the talks acknowledged these concerns and agreed that the sector will be treated as suppliers of services under the program. The Israelis also agreed that efforts will be undertaken to ensure that U.S. shipping companies receive information on Israeli Government commercial transactions made under the program.

7. WE UNDERSTAND THE JOINT ECONOMIC DEVELOPMENT GROUP WILL HAVE OVERSIGHT RESPONSIBILITY FOR THE GENERAL IMPLEMENTATION OF THE GUARANTEE. THE DEPARTMENTS OF STATE AND COMMERCE ARE MEMBERS OF THIS GROUP. WOULD THE DEPARTMENT OF TRANSPORTATION BE AN APPROPRIATE MEMBER?

The meeting of the U.S.-Israel Joint Economic Development Group (JEDG) in September will focus on economic reform issues. The composition of the U.S. delegation will be determined after the agenda for the meeting is set.

8. WE UNDERSTAND THAT THE STATE DEPARTMENT IS RESPONSIBLE FOR SUBMITTING AN ANNUAL REPORT TO CONGRESS ON THE ACTIVITIES SUPPORTED BY THE LOAN GUARANTEES. WHEN WILL THE FIRST REPORT BE ISSUED? WILL THE REPORT INCLUDE INFORMATION ON THE PURCHASE OF U.S. GOODS AND SERVICES SUCH AS OCEAN SHIPPING THAT RESULT FROM THE GUARANTEES? WOULD YOU PROVIDE A COPY OF THE REPORT TO THIS COMMITTEE?

The Administration will provide a report to the Congress on December 31st of each year. The report will cover all aspects of the loan guarantee program, including the purchase of U.S. goods and services. It will not be broken down by sub-category. A copy of the report will be made available to the Committee on Merchant Marine and Fisheries.



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